Nos. 425, 463 and 464.

Inheritance Tax Cases.

Motion to Advance.

Filed Oct. 12, 1897.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1897.

Josephine C. Drake, et al., *Plaintiffs in Error,* vs. Daniel H. Kochersperger, County Treasurer and County Collector of Cook County, Illinois, *Defendant in Error.*	**No. 425.** Error to the Supreme Court of the State of Illinois.
Elizabeth Emerson Sawyer, et al., *Plaintiffs in Error,* vs. Same, *Defendant in Error.*	**No. 463.** Error to the Circuit Court for the Northern District of Illinois.
Jessie Norton Torrence Magoun, *Appellant,* vs. Illinois Trust and Savings Bank, et al., *Appellees.*	**No. 464.** Appeal from the Circuit Court for the Northern District of Illinois.

MOTION TO ADVANCE.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1897.

Josephine C. Drake, et al., *Plaintiffs in Error,* vs. Daniel H. Kochersperger, County Treasurer and County Collector of Cook County, Illinois, *Defendant in Error.*	**No. 425.** Error to the Supreme Court of the State of Illinois.
Elizabeth Emerson Sawyer, et al., *Plaintiffs in Error,* vs. Same, *Defendant in Error.*	**No. 463.** Error to the Circuit Court for the Northern District of Illinois.
Jessie Norton Torrence Magoun, *Appellant,* vs. Illinois Trust and Savings Bank, et al., *Appellees.*	**No. 464.** Appeal from the Circuit Court for the Northern District of Illinois.

MOTION TO ADVANCE ABOVE ENTITLED CASES UNDER RULE 26.

To the Honorable, the Justices of the Supreme Court of the United States:

The Attorney General of the State of Illinois and the County Attorney for Cook County, Illinois, move that the above entitled cases may be advanced for argument and respectfully submit the following reasons why the motion should be granted, viz:

I.

The question involved in these cases is the constitutionality of a statute of the State of Illinois, entitled "An Act to tax gifts, legacies and inheritances in certain cases and to provide for the collection of the same", approved June 15, 1895.

The tax imposed is a graduated duty upon the right of inheritance, and varies from one to six per cent. according to the valuation of the estates passing from deceased persons to beneficiaries by will or under the intestate laws of the state, and according to the relationship of the beneficiaries to the deceased, with exemptions varying from $500 to $20,000.

The plaintiffs in error and appellant in these cases contend that this statute is invalid on the ground that its provisions conflict with the Fourteenth Article of Amendment to the Constitution of the United States. The particular points relied upon seem to be that the duty deprives citizens of property without due process of law; that the exemptions and the classification for taxation are arbitrary and without reference to a common ratio, and that a graduated duty varying according to amount of property is a denial of the equal protection of the laws.

II.

In the first case, *Drake* v. *Kochersperger*, No. 425, the Supreme Court of the State of Illinois held the statute valid; but the writ of error from this court has stayed the execution of the judgment. The pendency of that writ and the proceedings in the other cases have tended to

create difficulties and delay in the collection of the tax and to occasion a multiplicity of suits. The State of Illinois expected to collect not less than $500,000. per annum under this statute. The statute was enacted in 1895, and this litigation has already delayed its enforcement for more than two years, with a possibility of more than one years' further delay in this court, if these cases take their regular turn upon the docket.

III.

The questions arising in these cases under the Fourteenth Amendment cannot be authoritatively decided except by this court. Uncertainty and pending litigation as to the constitutionality of the statute imposing this duty must necessarily lead to numerous suits which will embarrass and hinder the enforcement of the law and the collection of the tax.

The administration of the tax laws of the State of Illinois will be greatly aided by the prompt and authoritative decision by this court of so grave a question as the constitutionality of the law which has thus been challenged.

IV.

The undersigned submit that these cases involve matters of sufficient general public interest to justify the granting of this motion.

They therefore pray that the cases be advanced upon the docket and heard at as early a day as may be convenient to the court.

Notice of this motion has been served on counsel for

the plaintiffs in error and appellant, respectively, and proof of service filed with the clerk of this court.

WASHINGTON, October 12, 1897.

Respectfully submitted.

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FRANK L. SHEPARD,
Assistant County Attorney, Cook County, Illinois.
Attorneys for Defendants in error and Appellee.
EDWARD C. AKIN,
Attorney General, State of Illinois.
Of Counsel.

Nos. 425, 463 and 464.

Brief of Harrison, Guthrie & Prussing
for P. E. & Appt.

IN THE SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1897.

Nos. 425, 463, 464.

Filed Dec. 21, 1897.

JOSEPHINE C. DRAKE *et al.*, Executors, &c.,
Plaintiffs in error,

vs.

DANIEL H. KOCHERSPERGER, County Treasurer, &c., of Cook County, Illinois.

Error to the Supreme Court of the State of Illinois.

ELIZABETH EMERSON SAWYER *et al.*, Executors, &c.,
Plaintiffs in error,

vs.

THE SAME.

Error to the Circuit Court of the United States for the Northern District of Illinois.

JESSIE NORTON TORRENCE MAGOUN,
Appellant,

vs.

ILLINOIS TRUST AND SAVINGS BANK, as Executor, &c., of JOSEPH T. TORRENCE, deceased, and DANIEL H. KOCHERSPERGER, County Treasurer, &c.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Brief of argument on behalf of plaintiffs in error and appellant in support of contention that the Illinois Inheritance Tax Law is in conflict with the provisions of the Fourteenth Amendment.

BENJAMIN HARRISON,
WILLIAM D. GUTHRIE,
EUGENE E. PRUSSING,
Of counsel for plaintiffs in error and appellant.

ILLINOIS INHERITANCE TAX CASES.

IN THE

Supreme Court of the United States,

OCTOBER TERM, 1897. Nos. 425, 463, 464.

JOSEPHINE C. DRAKE *et al.*, Executors, &c.,
Plaintiffs in error,

vs.

DANIEL H. KOCHERSPERGER, County Treasurer, &c., of Cook County, Illinois.

Error to the Supreme Court of the State of Illinois.

ELIZABETH EMERSON SAWYER *et al.*, Executors, &c.,
Plaintiffs in error,

vs.

THE SAME.

Error to the Circuit Court of the United States for the Northern District of Illinois.

JESSIE NORTON TORRENCE MAGOUN,
Appellant,

vs.

ILLINOIS TRUST AND SAVINGS BANK, as Executor, &c., of JOSEPH T. TORRENCE, deceased, and DANIEL H. KOCHERSPERGER, County Treasurer, &c.

Appeal from the Circuit Court of the United States for the Northern District of Illinois.

BRIEF OF ARGUMENT ON BEHALF OF PLAINTIFFS IN ERROR AND APPELLANT IN SUPPORT OF CONTENTION THAT THE ILLINOIS INHERITANCE TAX LAW IS IN CONFLICT

WITH THE PROVISIONS OF THE FOURTEENTH AMENDMENT.

I.

THE ISSUES PRESENTED BY THE PLEADINGS IN THESE CASES.

The three cases involve the same question as to the constitutionality, under the fourteenth amendment, of an act of the Illinois Legislature, commonly called the Inheritance Tax Law, in force July 1, 1895.

The first case, *Drake* v. *Kochersperger*, was begun by a petition filed by the defendant in error D. H. Kochersperger, County Treasurer and *ex officio* County Collector of Cook County, Illinois, against the executor of the last will of John D. Drake, deceased, in the County Court of Cook County, to ascertain and collect the tax imposed on the Drake estate by the statute in question. The executors filed a special and general demurrer to the petition, alleging the unconstitutionality of the act under the constitution of Illinois, and

> "That said alleged act of the legislature of the State of Illinois is void because it is in conflict with and in violation of the provisions of the Constitution of the United States of America." (Drake record, p. 3.)

The demurrer was sustained by the county court and the petition dismissed. The county treasurer thereupon appealed to the Supreme Court of Illinois, which reversed the judgment of the county court and sustained the constitutionality of the law (see opinion, Drake record, p. 8). The question under the Constitution of the United States, thus specially set up in the court of original jurisdiction by

the executors, was also presented in their behalf on the argument on the appeal below. The writ of error from this Court, allowed by the Chief Justice of the Supreme Court of Illinois, so certifies (Drake record, p. 21). The executors having succeeded in the county court and being therefore respondents in the Supreme Court of Illinois, there was no other way in which the question under the Federal Constitution could be there set up.

The second case, *Sawyer* v. *Kochersperger*, was brought by the county treasurer in the county court against the executors, trustees, devisees and legatees of Charles B. Sawyer, deceased, and was removed to the Circuit Court of the United States in and for the Northern District of Illinois. The petition alleges the liability of the estate and of the defendants to the tax under the Inheritance Tax Law, the appointment of an appraiser and the appraisement of the estate, the assessment of the tax in detail upon each devise and legacy (the total sum being $6,970), the lapse of sixty days since such assessment whereby the tax became immediately payable, the demand upon and failure and refusal of the defendants to pay on the specific ground that the act imposing the tax was in conflict with the provisions of the fourteenth article of amendment to the Constitution of the United States. (Sawyer record, p. 7, fol. 11.) The petition for removal was based upon the fact "that the petition in said cause shows that the above-entitled action is a controversy arising under the Constitution of the United States and under the fourteenth article of amendment to said Constitution of the United States of America." (Sawyer record, p. 28, fol. 45.) The answer of the defendants filed in the Circuit

Court of the United States admits the allegations of the petition so far as the proceedings taken to ascertain and assess the tax are concerned, but denies the validity of the law. It raises the same questions under the Constitution of the United States alleged in the petition for removal, and further amplifies the statement of them. (Sawyer record, p. 35, fol. 56.) The cause was heard upon petition and answer and a judgment entered in favor of the petitioner as prayed, for $6,970, which the executors were to pay "for the account of the various co-defendants interested in said estate in the proportion and in the manner following—[here follows the specification of each legacy or devise and the tax thereon]." (Sawyer record, pp. 36–38.) The petition for writ of error and assignment of errors raise the same questions as the answer (Sawyer record, p. 39).

The third case, *Magoun* v. *Illinois Trust and Savings Bank, et al.*, was a bill in chancery filed in the Circuit Court of the United States in and for the Northern District of Illinois, by Jesse Norton Torrence Magoun, a resident and citizen of New York, against the trust company, as executor of and trustee under the last will and testament of Joseph T. Torrence, deceased, and the county treasurer of Cook County, Illinois, both residents and citizens of Illinois (Magoun record, pp. 1–5), to remove a cloud from the real estate devised by said decedent to the complainant and to enjoin the first named defendant from voluntarily paying and the county treasurer from collecting or receiving the inheritance tax, amounting to more than $5,000, alleged to be due upon the entire estate of said decedent and for which the complainant's interest in said estate was contended by the county treasurer to be liable. The

bill sets forth the will of the decedent, a description and valuation of the real estate and personal property left by him, amounting in all to $600,000 above his debts, and the demand of the county treasurer for the inheritance tax which by the act in question is made a lien on all of said property, the request of the complainant to the defendant trust company not to pay the same, to contest the constitutionality of the act, to refrain from paying the same voluntarily and without protest, and to await the commencement of legal proceedings to enforce the same, the refusal of the trust company to comply with this request, and its threat and intention to pay said tax at once voluntarily, which payment could not be recovered if said law should hereafter be declared unconstitutional. The bill also alleges that such payment would result in waste of the estate and would be a breach of trust on the part of said executor, to the irreparable loss and injury of the complainant; that the alleged lien of the tax clouds the title to the real property and renders the same unmarketable, and that the act is in conflict with the provisions of the fourteenth amendment. The trust company answered, admitting the allegations of fact in the bill, but submitting the question of the constitutionality of the law to the court and praying to be advised of its rights and duties in the premises as executor and trustee aforesaid and as an officer of the court (Magoun record, p. 12). The county treasurer denied that the act was unconstitutional, and admitted the allegations respecting the estate of the deceased, the interest of the complainant therein, the lien of the inheritance tax thereon and the claim and demand made therefor (Magoun record, pp. 13–17). The cause was heard on bill and answers and a decree was entered dis-

missing the bill (Magoun record, p. 18), from which an appeal was prayed to this Court and allowed. The assignment of errors is substantially the same as in the Drake and Sawyer cases. (*Pollock* v. *Farmers Loan and Trust Co.*, 157 U. S., 429, 554; *Dodge* v. *Woolsey*, 18 How., 331, 341, 345.)

II.

THE PROVISIONS OF THE ILLINOIS INHERITANCE TAX LAW.

The law is entitled "An act to tax gifts, legacies and inheritances in certain cases and to provide for the collection of the same," approved June 15, 1895, in force July 1, 1895, and is to be found on page 301 of the laws of Illinois for 1895, and also in Starr and Curtis's Statutes (1896) Vol. 3, p. 3528. A copy of the act is printed as an appendix to this brief.

Section 1 of the act provides that the beneficial interest to any property or the income therefrom which shall pass by will or descent or transfer, deed, grant, sale or gift made in contemplation of death, to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son or the husband of the daughter, or any child or children adopted, or any lineal descendant born in lawful wedlock, shall be taxed one dollar on every hundred dollars of the clear market value of the property *received by each person*, and at the same rate for every less amount, provided that any estate, which may be valued at a less sum than $20,000, shall not be subject to any such duty or tax, and that the tax is to be levied in the above cases only upon the excess of $20,000 received by each person, thus exempting all estates and legacies of $20,000 or less. When the beneficial interest to any property or the in-

come therefrom shall pass to or for the use of any uncle, aunt, niece, nephew or any lineal descendant of the same, the rate of tax is fixed at two dollars on every hundred dollars in excess of $2,000 received by each person. In all other cases, the tax is upon the *estate* and not the amount received by each person, and the tax is classified as follows: On each and every hundred dollars of the clear market value of all property, and at the same rate for any less amount, on all estates of ten thousand dollars and less—three dollars; on all estates over ten thousand dollars and not exceeding twenty thousand dollars—four dollars; on all estates over twenty thousand dollars and not exceeding fifty thousand dollars—five dollars; and on all estates over fifty thousand dollars—six dollars. There is an exemption in all such cases of estates valued at a less sum than five hundred dollars.

Section 2 provides that estates for life or for a term of years, bequeathed or devised to mother, father, husband, wife, brother and sister, the widow of the son, or a lineal descendant, shall not be taxed, but that a tax shall be levied only on the value of the remainder of the estate, and shall be payable with interest at the expiration of the estate of the first taker, thus exempting life estates and estates for years, no matter how valuable, from all taxes under the act. The remainder of the act consists of provisions for the machinery necessary to levy and collect the tax, through the medium of an appraiser to be appointed by the county court upon the application of the county treasurer, etc.

The question presented in these cases is not as to the validity of taxes upon successions. The power to impose an inheritance tax in a proper manner and accord-

ing to some rule of equality need not be challenged for the purposes of this argument.

The point of constitutional law to be decided is whether or not, under the fourteenth amendment, the states can levy graduated or progressive taxes upon persons, property or privileges arbitrarily classified solely according to the amount or value of the property or privilege taxed, and whether or not exemptions of legacies as large as twenty thousand dollars and of estates for life and years, no matter how large or valuable, can be sustained.

The opinion of the Supreme Court of Illinois in the Drake case holds that the law in question levies a tax upon the right or privilege of succession, and that the classification provided in the act is within the legislative power and discretion. In its opinion, the court said (Drake record, p. 10):

> "By this act of the legislature *six classes of property are created heretofore absolutely unknown.* It is those classes of property depending upon the estate owned by one dying possessed thereof which the State may regulate as to its descent and the right to devise. * * No person inherits property or can take by devise except by the statute; and the State, having power to regulate this question, may create classes and provide for uniformity with reference to classes which were before unknown."

The interpretation by the Supreme Court of Illinois is, therefore, that by this statute "six classes of property are created heretofore absolutely unknown," namely, "classes of property depending upon the estate owned by one dying possessed thereof." In the case of next of kin, the tax is levied upon the amount "received by each person." In all other cases, the class and the tax depend, as the court held, "upon the estate owned by one dying possessed thereof." The court also declared that the amount levied "is

not a tax on the estate, but on the right of succession" (Drake record, fol. 14).

There are, therefore, two different and distinct systems or principles applied in the Illinois act: the one basing the tax on the amount received or the value of the privilege of succession; the other basing the tax upon the estate owned by the decedent irrespective of the amount or value of the legacy.

Taking for example the first class of legacies to children, etc., there is no graduation or progression of the tax other than such as may result from the exemptions of estates for life or for years and $20,000. These exemptions of themselves produce the grossest inequality. The estate of the decedent may consist of several hundred thousand dollars, but there is absolutely no tax if it be divided into legacies of $20,000. An estate of $100,000 divided among five direct heirs pays no tax. The provision frees from the burden of the tax more than ninety per cent. of the property of the state. Practical experience has shown that estates in most instances will be so divided in order to defeat the tax, and that this exemption will therefore attain enormous proportions. An amendment of the collateral inheritance tax law in New York was for this reason found necessary.[1] The main policy of the Illinois act is clearly to force redistribution of property and wealth and not to provide revenue.

But if we take the instances of the third class, applying to all grantees, devisees or legatees other than near relatives, we find that the tax depends upon the amount of the *estate*, irrespectively of the amount or share received by each person.

In order to show the scope and operation of

[1] *Matter of Hoffman*, 143 N. Y., 327, 330.

the act, let us suppose two estates: one estate of $10,000 passing to one legatee and another estate of $60,000 passing to six legatees receiving $10,000 each. In each instance, the recipient inherits or receives $10,000; that is the extent or value to him of the privilege or right of succession. In the one case, the legatee pays a tax of three per cent. or $300; in the other, he pays a tax of $600 *on receiving exactly the same legacy, exercising exactly the same privilege or right of succession, under exactly similar circumstances.* Or let us assume that A. is entitled to a legacy of $5,000 out of an estate of $10,000 and that B. is entitled to $5,000 out of an estate of $10,001. A. pays $150, but B. pays $200 for the right to receive exactly the same sum, in other words, for exercising the identical privilege or right of succession.

Thus, A. is entitled to $10,000, on which the tax is $300. B. is entitled to $10,001, on which the tax is $400.04. B. is therefore mulcted in $100.04 more than A. because he has been bequeathed a dollar more. C. is entitled to $20,000, on which the tax is $800. D. is entitled to $20,001, on which the tax is $1,000.05. D. is mulcted in $200.05 more than C. because he is bequeathed a dollar more. E. is entitled to $50,000, on which the tax is $2,500. F. is entitled to $50,001, on which the tax is $3,000.06. F. is mulcted in $500.06 more than E. because he is bequeathed a dollar more.

The progression is likewise unnecessarily arbitrary if we take the view that the tax is levied on the amount received, which is not the correct interpretation of the statute, as the Illinois Supreme Court has declared. Under such an assumption, those taking the larger amounts are required to pay a larger rate on the same sums upon which those taking smaller sums pay a smaller rate; that is to say, one who receives

a legacy of $10,000 pays 3 per cent., or $300, thus receiving $9,700 net; while one receiving a legacy of $10,001 pays 4 per cent. on the whole amount, or $400.04, thus receiving $9,600.96, or $99.04 less than the one whose legacy was actually one dollar less valuable. This method is applied throughout the class. Other examples might be stated.

These are, it is true, extreme cases; but they differ only in degree from the many unjust and unnecessary discriminations which must follow the enforcement of this act. If progressive taxes are to be sanctioned, let us at least have reasonably fair provisions.

In characterizing this arbitrary feature, Judge Carter, in his opinion in the county court, said (*Chicago Legal News*, November 28, 1896):[1]

> "If this portion of the law that I am now discussing had been worded so that all beneficiaries should be taxed three per cent. on the first $10,000 that they received, four per cent. on the next $10,000, five per cent. on the next $30,000, and six per cent. on all in excess of that amount, I should feel strongly inclined to hold that the law was constitutional, even in the face of the Minnesota and Ohio decisions just referred to, and certainly a law drawn on reasonable lines graduating the taxes in proportion to the amount of property received by the beneficiaries, must be held constitutional, if the $20,000 exemption in the first class in this act be constitutional.
>
> "Under the law as it was passed, a person who is entitled to a legacy of $10,001 is taxed $400.04, and will actually receive only $9,600.96, while a person who has a legacy of only $10,000 is taxed $300, and actually receives $9,700, or about $100 more than the person who, under the will was entitled to the larger legacy. Again, the person who receives more than $50,000, is taxed $600 on the first $50,000, while the person who received only $50,000 is taxed $500 on it. Is this reasonable? Is this, as the Ohio Supreme Court says, 'equal protection?' Why should a man who has a right to receive $50,000 worth of property be only taxed $500, while a man who receives an estate exceeding $50,000 be taxed on an equal amount $600? If the persons who are to receive, under this part of the law, $10,000 or less, are considered as one class, and those who receive from $10,000 to $20,000 another class, and those who receive from $20,000

[1] A printed copy of this opinion is filed herewith.

to $50,000 another class, and those who receive in excess of $50,000 another class, then it is true that each one of these four classes respectively is taxed uniformly as to the class upon which it operates, but is there any good reason for considering this a reasonable classification?

"It may be urged with a great deal of force that this law is in contravention of Section 2, Article II of the Constitution, which says that the fundamental rights of property and liberty cannot be taken without due process of law or the 'law of the land.' 'The law of the land is the opposite of arbitrary, unequal and partial legislation. The legislature has no right to deprive one class of persons of privileges allowed to other persons under the same conditions.' (*Ritchie* v. *People*, 155 Ill., 105.) * * *

"Is there any distinction in rights and privileges that differentiate, in any important particulars, the persons who receive by will $20,000 and no more, from the class of persons who under this law receive by will $20,100? Is not a rule purely arbitrary that compels a person who receives more than $20,000 by will to pay four per cent. on the first $20,000 that he receives, and a person who receives by will not to exceed $20,000 paying but three per cent.? This classification into the $10,000 amounts, $20,000 amounts, and $50,000 amounts creates classes of persons who possess rights and privileges not allowed to other persons under the same conditions. * * *

"If this arbitrary division, as laid down in this law is to be sustained, what is to hinder the enactment of a law dividing into classes, which has even less justification and reason than this? In my judgment this law tends directly and necessarily to disproportion in taxation."

In discussing a similar point under the Massachusetts act, LATHROP, J., dissenting in *Minot* v. *Winthrop* (162 Mass., 113, 130) said:

"There is also another objection to which I see no answer. If this tax is to be considered constitutional on the ground that it is a tax upon the privilege of taking by devise or succession, there is clearly on the face of the act no equality. Suppose A. and B. die seized of separate estates, the respective values of which, after payment of debts, are ten and over ten thousand dollars. A. bequeaths a legacy to C. of five thousand dollars, and B. bequeaths a legacy to D. of the same amount. C. and D. each enjoy the same privilege; yet C. pays no tax, while D. pays a tax of $250. Can this be said to be equal, or even reasonable? The necessary effect of the tax is to produce inequality; and, in my judgment, it is as much the duty of the court to declare the statute to be in violation of the Constitution, as if it imposed a tax upon property and were disproportionate."

III.

THE SCOPE OF THE FOURTEENTH AMENDMENT AND ITS REGULATION OF TAX LAWS IN THE VARIOUS STATES.

It is now well settled that the tax laws of the states are within the purview of the fourteenth article of amendment to the Constitution of the United States and are subject to its limitations. Whatever may have been the occasion or origin of the amendment, the framers were not legislating for a particular race or locality, but for all time and for all occasions. The civil war and the complications following it had shown that the general guaranty of a republican form of government in the Constitution (section 4 of article IV.) was insufficient and inadequate to afford protection against unequal, arbitrary or spoliative legislation on the part of the states. A shield was, therefore, forged to protect all, everywhere, from arbitrary and spoliative legislation, and the duty was confided to the national judiciary of enforcing due process of law in respect of the life, liberty or property of the citizen and the guaranty of the equal protection of the laws.

Prior to the adoption of the amendment, the sovereign power of the states was supreme. Private property could be confiscated and vested rights sported with and nullified under the pretence of taxation, but the sufferer could not seek redress in the federal tribunals. No arbitrary exercise of power on the part of legislatures and local courts in reference to property could be redressed or checked by the national judiciary except in the case of bills of attainder or laws impairing the obligation of contracts. The prohibition against *ex post facto* laws only applied to criminal cases. Rights deemed fundamental and inherent in our system of

government might have been abridged or denied by the local courts, but there was no appeal to the Supreme Court of the United States. The people had become impressed with the fact that the main danger to the perpetuity of the nation was to be found in the powers exercised by the states. It was to remove all opportunity for any abuse of state power, and to give to the people safeguards of the highest value that the fourteenth amendment was adopted. Mindful of the facility with which state constitutions are changed, the framers of the amendment sought to nationalize the principle of equality and to fix an immutable standard applicable under all circumstances. The solemn act of amendment embodied the judgment, the conscience and the will of the people as a nation after the practical experience of three-quarters of a century. The limitations thus imposed are universal in their application, and directed to any and every mode of state action. The very object of the restriction was to ordain and enforce the fundamental rule of equality so that it could not be varied according to the passion or caprice of a majority. The amendment was the outward manifestation of the conviction of the people—the expression of their determination—that equality should rule our destinies as a national right—equality of rights, equality of duties, equality of burdens.

In *Hurtado* v. *California*, 110 U. S., 516, 536, Mr. Justice MATTHEWS said:

> "The limitations imposed by our constitutional law upon the action of the governments, both State and national, are essential to the preservation of public and private rights, notwithstanding the representative character of our political institutions. The enforcement of these limitations by judicial process is the device of self-governing communities to protect the rights of individuals and minorities, as well against the power of numbers, as against the violence of

> public agents transcending the limits of lawful authority, even when acting in the name and wielding the force of the government."

The fourteenth amendment not only imposed as a restraint on state legislation the time honored provision of Magna Charta and of the fifth amendment—that no man shall be deprived of life, liberty or property without due process of law, but it went further and adopted an additional provision, in language new to our constitutions, viz.: that no state shall "deny to any person within its jurisdiction the equal protection of the laws."

It has not been necessary for the Court to define the scope of this additional guaranty, and it is fortunate and wise that no attempt has been made to fix by definition the bounds of any such constitutional limitation. But the Court has declared (*Yick Wo* v. *Hopkins*, 118 U. S., 356, 369) that

> "THE EQUAL PROTECTION OF THE LAWS IS A PLEDGE OF THE PROTECTION OF EQUAL LAWS."

The fourteenth amendment guarantees equal tax laws, and a law providing for a graduated or progressive tax—whether imposed upon property or upon the privilege or right of succession—is a denial of the equal protection of the laws.

That the framers of the fourteenth amendment may not have contemplated the restriction or prevention of progressive taxation is, of course, immaterial. But it is well known that the subject of unequal and discriminating taxes was in the contemplation of the joint committee of Congress. Indeed, if it had been the particular intention to prohibit graduated or progressive taxation, no other or additional words would have been used. The case is clearly within the language as

well as the spirit of the limitation. As was said by Chief Justice MARSHALL in *Dartmouth College* v. *Woodward*, 4 Wheaton, 518, 644–5 :

> "It is not enough to say, that this particular case was not in the mind of the Convention, when the article was framed, nor of the American people, when it was adopted. It is necessary to go farther, and to say that, had this particular case been suggested, the language would have been so varied, as to exclude it, or it would have been made a special exception. The case being within the words of the rule, must be within its operation likewise, unless there be something in the literal construction so obviously absurd, or mischievous, or repugnant to the general spirit of the instrument, as to justify those who expound the constitution in making it an exception."

Numerous decisions have now settled the doctrine that the fourteenth amendment protects the property of all persons from spoliation or confiscation under the operation or mask of arbitrary tax laws ; and indeed most of the important litigation under the fourteenth amendment arises in tax cases. It will always be from the exercise of the taxing power that we must most apprehend arbitrary and unequal laws.

In the first case which presented to the federal courts the consideration of tax laws under the fourteenth amendment, Mr. Justice FIELD said (*The Railroad Tax Cases*, 13 Fed. Rep., 722, 733–4) :

> "The fourteenth amendment to the constitution, in declaring that no state shall deny to any person within its jurisdiction the equal protection of the laws, imposes a limitation upon the exercise of all the powers of the state which can touch the individual or his property, including among them that of taxation. Whatever the state may do, it cannot deprive anyone within its jurisdiction of the equal protection of the laws. And by equal protection of the laws is meant equal security under them to every one on similar terms,—in his life, his liberty, his property, and in the pursuit of happiness. It not only implies the right of each to resort, on the same terms with others, to the courts of the country for the security of his person and property, the prevention and redress of wrongs and the enforcement of contracts, but also his exemption from any greater burdens or charges than such as are equally imposed upon all others under like circumstances. * *

"What is called for under a constitutional provision requiring equality and uniformity in the taxation of property must be equally called for by the fourteenth amendment. The forced contribution from one which would follow taxation of his property without reference to a common ratio, would be inconsistent with that equal protection which the amendment requires the state to extend to every person within its jurisdiction."

In *County of Santa Clara* v. *Southern Pac. R. Co.*, 18 Fed. Rep., 385, 396, 397, 398, 399, Mr. Justice FIELD again said:

"Until the adoption of the fourteenth amendment there was no restraint to be found in the constitution of the United States against the exercise of such power by the states. * * The first section of the fourteenth amendment places a limit upon all the powers of the state, including, among others, that of taxation. * *

"Oppression of the person and spoliation of property by any state were thus forbidden, and equality before the law was secured to all. In the argument of the *San Mateo Case* in the supreme court, Mr. Edmunds, who was a member of the senate when the amendment was discussed and adopted by that body, speaking of its broad and catholic spirit, said: 'There is no word in it that did not undergo the completest scrutiny. There is no word in it that was not scanned, and intended to mean the full and beneficial thing that it seems to mean. There was no discussion omitted; there was no conceivable posture of affairs to the people who had it in hand' which was not considered. And the purpose of this long and anxious consideration was that protection against injustice and oppression should be made forever secure—to use his language—'secure, not according to the passion of Vermont, or of Rhode Island, or of California, depending upon their local tribunals for its efficient exercise, but secure as the right of a Roman was secure, in every province and in every place, and secure by the judicial power, the legislative power, and the executive power of the whole body of the states and the whole body of the people' * *.

"Unequal taxation, so far as it can be prevented, is, therefore, with other unequal burdens, prohibited by the amendment."

In the *Kentucky Railroad Tax Cases*, 115 U. S., 321, 337, Mr. Justice MATTHEWS said:

> "The rule of equality, in respect to the subject, only requires the same means and methods to be applied impartially to all the constituents of each class, SO THAT THE LAW SHALL OPERATE EQUALLY AND UNIFORMLY UPON ALL PERSONS IN SIMILAR CIRCUMSTANCES."

In *Phila. Fire Asso.* v. *New York*, 119 U. S., 110, 120, 121, Mr. Justice HARLAN, in the dissenting opinion, said:

> "The denial of the equal protection of the laws may occur in various ways. It will most often occur in the enforcement of laws imposing taxes. An individual is denied the equal protection of the laws if his property is subjected by the state to higher taxation than is imposed upon like property of other individuals in the same community."

The Court has repeatedly held that the fourteenth amendment requires that all persons subject to legislation "shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed." (*Hayes* v. *Missouri*, 120 U. S., 68, 71–2; *Missouri Ry. Co.* v. *Mackey*, 127 U. S., 205, 209.) As Mr. Justice SHIRAS said in *Hallinger* v. *Davis*, 146 U. S., 314, 321:

> "It means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances."

In *Barbier* v. *Connolly*, 113 U. S., 27, 31, 32, Mr. Justice FIELD said:

> "The Fourteenth Amendment, in declaring that no State 'shall deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws' undoubtedly intended not only that there should be no * * arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness and acquire and enjoy property; * * * that no greater burdens should be laid upon one than are laid upon others in the same calling and condition * * *. Class legislation, discriminating against some and favoring others, is prohibited."

IV.

AS TO THE POWER OF CLASSIFICATION.

The power of the states to determine and classify the subjects of taxation or the rate at which taxes shall be levied is not challenged. But, "the power of the state stops at injustice."[1] Such classification and the degree of taxation of the selected subjects are within legislative discretion, yet under the restraint of the supreme law of the land, which ordains that taxes shall be levied through equal laws impartially administered. The fourteenth amendment leaves the power of taxing the people and property of a state unimpaired as it was prior to 1866, and leaves the state government as theretofore with full command of all its resources, subject only to the requirement of equality. We have in that requirement a principle which is safe for the people and safe for the states. If the just and wise rule of equal taxes be observed, there never can be any clashing of sovereignty. The state legislatures following the just rule of equality, are untrammeled by interference on the part of the federal courts. Then, as Chief Justice MARSHALL said in *McCulloch* v. *Maryland*, 4 Wheaton, 316, 430:

> "We are not driven to the perplexing inquiry, so unfit for the judicial department, what degree of taxation is the legitimate use, and what degree may amount to the abuse of the power."

Upon this question of classification, it will be instructive to recall some of the decisions in prior cases, which have declared the limits within which this power must be exercised.

The classification contained in the Illinois statute is

[1] MCKENNA, C. J., in *Southern Pac. Co.* v. *Board of Railroad Commissioners*, 78 Fed. Rep., 236, 257.

not only unusual but "heretofore unknown" to the legislation of Illinois and "to the practice of our governments." No state has ever imposed a graduated property or inheritance tax which has been sustained by the courts. In New York, at the last session of its legislature, an act was passed imposing a tax progressing to fifteen per cent. on large estates, but the Governor of that State vetoed the measure on grounds of statesmanship and constitutional law.

In *Bell's Gap Railroad Co.* v. *Pennsylvania*, 134 U. S., 232, 237, Mr. Justice BRADLEY said:

> "All such regulations, and those of like character, so long as they proceed within reasonable limits and general usage, are within the discretion of the state legislature, or the people of the State in framing their Constitution. But clear and hostile discriminations against particular persons and classes, especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition. It would, however, be impracticable and unwise to attempt to lay down any general rule or definition on the subject, that would include all cases. They must be decided as they arise."

Mr. Justice FIELD, in *Home Ins. Co.* v. *New York*, 134 U. S., 594, 606–7, said that classification of property for taxation was not prevented by the fourteenth amendment and not open to objection if all within any particular class selected "are treated alike under similar circumstances and conditions, in respect to the privileges conferred upon them and the liabilities to which they are subjected."

In *Giozza* v. *Tiernan*, 148 U. S., 657, 662, Chief Justice FULLER used the following language:

> "Nor, in respect of taxation was the (fourteenth) amendment intended to compel the State to adopt an iron rule of equality. * * * *It is enough that there is no discrimination in favor of one as against another of the same class.* * * And *due process of law* within the meaning of the amendment is secured if the laws operate on all alike, and do not subject the individual to an arbitrary exercise of the powers of government."

And at the last term of the Court the whole subject of classification by the states in its various aspects, was reviewed. In *Gulf, Colorado and Santa Fé Ry.* v. *Ellis*, 165 U. S., 150, 155, 159, 160, 165, a classification was held unconstitutional because "the rule of equality is ignored." Mr. Justice BREWER said:

> "Yet it is equally true that such classification cannot be made arbitrarily. The State * * may not say that all men beyond a certain age shall be alone thus subjected, OR ALL MEN POSSESSED OF A CERTAIN WEALTH. These are distinctions which do not furnish any proper basis for the attempted classification. That must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis. * * But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this. * * No duty rests more imperatively upon the courts than the enforcement of those constitutional provisions intended to secure that equality of rights which is the foundation of free government. * * It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection."

The language of SWAYNE, D. J., *In re Grice*, 79 Fed. Rep., 627, 645, may well be quoted:

> "This subject of equality before the law is a fundamental principle of English and American liberty, which not only has been held sacred in all latter-day constitutions, state and federal, but the principle has been guarded by the courts with jealous watchfulness, to see that the citizen may have guaranteed to him this inestimable privilege and condition."

After reviewing numerous decisions of this Court on this point, Judge SWAYNE continues (p. 646):

> "This statute under discussion is clearly class legislation, discriminating against some and favoring others. It is not that character of legislation which, in carrying out a public purpose, is limited in its application, and, within the sphere of its

operation, affects alike all persons similarly situated. It may affect, and does affect, individuals of the same class in an opposite way. It favors some individuals of a certain class, and denounces other individuals of the same class. This statute exempts no class. On the contrary, it seeks to exempt certain classes of property, which is carrying the doctrine beyond any case to which we have had access. All property in the state is entitled to equal protection, and no special property is entitled to, or ought to receive, any special favors. Discrimination may be as potent against the citizen, in the direction of his property, as if aimed directly against himself personally."

In *Northern Pacific R. Co.* v. *Walker*, 47 Fed. Rep., 681, 686, CALDWELL, J., said :

"Property of the same kind, and in the same condition, and used for the same purpose, cannot be divided into different classes for purposes of taxation, and taxed by a different rule, because it belongs to different owners."

In *State* v. *Loomis*, 115 Mo., 307, 314, the Supreme Court of Missouri, by BLACK, J., said :

"Classification for legislative purposes must have some reasonable basis upon which to stand. It must be evident that differences which would serve for a classification for some purposes furnish no reason whatever for a classification for legislative purposes. The differences which will support class legislation must be such as in the nature of things furnish a reasonable basis for separate laws and regulations."

V.

AS TO THE POWER OF THE STATES TO REGULATE SUCCESSIONS TO THE PROPERTY OF DECEDENTS.

Even if it be assumed that the state is the natural successor to dead men's property; that its intestate laws and statutes of wills are acts of grace, and that it can destroy the privilege of inheritance or testamentary disposition and escheat all property, the Illinois act is still repugnant to the fourteenth amendment. The acts of grace of a state are not like the gifts of a private person or of an

irresponsible despotic sovereign who bestows according to his fancy. They are solemn laws which must affect impartially and equally all persons within their purview. Though the ability to share in an estate may be called the privilege of succession, the privilege while unrevoked must be treated as an equal right and granted impartially: it cannot be granted to those of moderate means and denied partially or wholly to those of large means. The Supreme Court of Illinois in its opinion on this act refers very properly to the "right of succession." This right, whatever its origin and character, is capable of enjoyment, and those who enjoy it are entitled to "the equal protection of the laws."

It may be conceded that the principles of classification which the Court has declared in expounding the fourteenth amendment do not inhibit a state from placing the estates of decedents or rights of succession thereto in a distinct class for purposes of taxation. Having drawn a line between the transfer of property of living persons and the transfer of estates of decedents, the state may subject the latter to further classification in respect of successors. Thus aliens may be singled out for special burdens or excluded altogether in accordance with well-known principles, and distinctions may be drawn between relatives and strangers, and relatives may be classified according to their degree of kinship to the decedent.

All these classes may be defined and different rates may be imposed upon property passing to each without necessarily denying to successors the equal protection of the law, for in each case the classification rests upon an intelligible and reasonable foundation when all in the class selected are equally taxed or equally exempted.

But when the state selects a particular class of individuals for taxation, it must tax them upon exactly the same rules of equality which govern the classification of the property of other persons. If property cannot be subjected to a progressive tax, neither can the privilege of succession to an estate. If an owner of property cannot be favored with a large exemption, neither can his successors or legatees.

Should a state demand a contribution of one per cent. from the $20,000 farm of A, and five per cent. from the $50,000 farm of B, and exempt all farms under $10,000 in value, it would deny to A and B the equal protection of the laws. There can be no reasonable doubt of the unconstitutionality of such a scheme of taxation.

A supposed public right of absolute control over the property of decedents is the real basis of the decision of the Supreme Court of Illinois in sustaining the Inheritance Tax law. The court refers to the tax as "the amount reserved to the state from the estate of a deceased owner," and if the state may *reserve* a part it may retain the whole. Indeed, the only plausible justification for this tax law is that the power of the state in the premises is so absolute that those who share in an estate should be thankful for what they are allowed to receive.

There is no ground upon which a decedent's estate or rights therein can be distinguished from property in its usual condition, so that while the latter must be classified according to essential characteristics, the other may be classified according to a graduated scale of values. Value in this relation is plainly unrelated to character. Should it be approved as a basis of classification, the resulting classes could be divided by

arbitrary lines capable of indefinite multiplication at rates wholly arbitrary. The only safe course is to hold that the states are bound to treat the property of decedents as private property, and must classify it for taxing purposes according to the principles of equality which obtain in the taxation of other private property.

The consideration of the questions of legislative power presents two aspects, which may be noticed: the one, as to the right of inheritance; the other, as to the right of a testator to bequeath his property.

The right of inheritance existed in England long before the Conquest, and it was recognized and perpetuated in the great charters of English liberty.[1] It is treated as "our common law of inheritance."[2] An act depriving children of all right to inherit and forfeiting or escheating to the state the property of their parents would, it is submitted, be declared utterly in conflict with the theory upon which our political institutions rest, and an infringement of inalienable rights beyond the power of our governments. This right of inheritance was recognized in the ordinance of 1787 for the government of the northwest territory and subsequently embodied in the Illinois constitutions.

In the latest authoritative history of English law,[3] the learned authors say:

> "In calling to our aid a law of intestate succession, we are not invoking a modern force. As regards the German race we cannot go behind that law; the time when no such law existed is in strictest sense a prehistoric time."

The federal courts have yet to intimate that the states have the power to deny inheritance and to escheat the property of a decedent to the exclusion of his family.

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[1] Pollock & Maitland's Hist. Eng. Law, book 2, pp. 237 *et seq.* [2] *Ibid*, p. 257. [3] *Ibid.*, p. 248.

As Mr. Justice BROWN says in *U. S.* v. *Perkins*, 163 U. S., 625, 628 :

> "The general consent of the most enlightened nations has, from the earliest historical period, recognized a natural right in children to inherit the property of their parents."

The right to devise or bequeath property at will has been said to be a limitation upon inheritance as well as a power to prevent escheat. However originating—whether in statute or in the old customs and the practice of *post obit* gifts—the power has been recognized as an incident of the right of property from time immemorial and has been considered a common law right in America.[1] As BLACKSTONE said[2] :

> "With us in England, this power of bequeathing is coeval with the first rudiments of the law: for we have no traces or memorials of any time when it did not exist. Mention is made of intestacy, in the old law before the Conquest, as being merely accidental ; and the distribution of the intestate's estate, after payment of the lord's heriot, is then directed to go according to the established law."

In *Windham* v. *Chetwynd*, 1 Burr., 414, 419, Lord MANSFIELD said that the power of devising was "a natural consequence of property, and the right a man has over his own. It was a right by the law of the land before the Conquest, and down to about the time of Henry the 2d. It ceased, consequentially only, by the introduction of feodal tenures; because, originally, every species of alienation was contrary to that system. As soon as the power of alienation *inter vivos* was indulged, testaments followed, indirectly, as declarations of uses." (See also *Stewart's Executor* v. *Lispenard*, 26 Wend., N. Y., 255, 296–7.)

The right of the state to designate heirs, to exclude

[1] Hammond's Blackstone, book 2, p. 579, note 69.
[2] Book 2, Ch. 32, p. 491.

aliens, to confer rights of curtesy and dower, to forbid perpetuities, to safeguard creditors, and otherwise regulate the holding of property, is consistent with its inability to convert estates to public use upon the death of the owner.

And, as Chief Justice Waite said of another governmental power of regulation, "this power to regulate is not a power to destroy, and limitation is not the equivalent of confiscation." [1]

The state may reasonably limit the right of devise and bequest just as it may regulate the transfer or the holding of real or personal property, but it cannot by any general or partial act of escheat or attainder confiscate all property. The status of husband and wife, of lineal and collateral relatives, of strangers, aliens and creditors, may be said to depend in a sense upon the favor of the state. But this favor is not granted as an alternative to the succession of the state. The estate of a decedent is to go to some person or persons; to what persons and in what proportions the state may determine and regulate, and that is the extent and limit of its power.

In the cases now before the Court, it is not necessary to decide whether the legislature of any state can destroy the right of inheritance or of devise and bequest. The state here has not attempted to do so. It has sought to regulate the exercise of the right by laws unequal in their operation, and their arbitrary features are sufficient to annul them.

In *Minot* v. *Winthrop*, 162 Mass., 113, 117, the Supreme Judicial Court of Massachusetts said:

> "The descent or devolution of property on the death of the owner in England and in this country has always been

[1] *Railroad Commission Cases*, 116 U. S., 307, 331.

> regulated by law. We have no occasion in these cases to consider whether the legislature has the power to make the Commonwealth the universal legatee or successor of all the property of all its inhabitants when they die, for the purposes not only of paying the public charges, but also of distributing the property according to its will among the living inhabitants, or for the purpose of abolishing private property altogether. We assume that under the Constitution this cannot be done, either directly or indirectly; that the legislature cannot so far restrict the right to transmit property by will or by descent as to amount to an appropriation of property generally; that it cannot impose a tax which shall be equivalent, or almost equivalent, to the value of the property, and cannot so limit the persons who can take as heirs, devisees, distributees, or legatees that the great mass of all the property of the inhabitants must become vested in the Commonwealth by escheat. The state can take property by taxation only for the public service, and we assume that its right to take property, if any exists, by regulating the distribution of it on the death of the owner, is limited in the same manner, and that this right must be exercised in a reasonable way."

When the question is presented as to whether or not a state has the absolute, unrestrained power to escheat or confiscate the property of a decedent, this Court will find no difficulty in denying the existence of any such arbitrary and despotic power. If such a law were directed against certain individuals or those possessed of certain wealth, the legislation would be nothing less than a bill of attainder covered by the express provision of section 10 of Article I of the Constitution; for, as is well known, attainder was used in a generic sense, and includes the confiscation of the property of an individual or classes of individuals.[1]

Chief Justice MARSHALL said in *Fletcher* v. *Peck*, 6 Cranch, 87, 135, 137–8:

> "It may well be doubted whether the nature of society and of government does not prescribe some limits to the legislative power; and, if any be prescribed, where are they

[1] 3 *Am. & Eng. Encyc. of Law*, sec. ed., p. 248.

to be found, if the property of an individual, fairly and honestly acquired, may be seized without compensation. * *

"Whatever respect might have been felt for the state sovereignties, it is not to be disguised that the framers of the constitution viewed, with some apprehension, the violent acts which might grow out of the feelings of the moment; and that the people of the United States, in adopting that instrument, have manifested a determination to shield themselves and their property from the effects of those sudden and strong passions to which men are exposed. The restrictions on the legislative power of the states are obviously founded in this sentiment; and the constitution of the United States contains what may be deemed a bill of rights for the people of each state.

"No state shall pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts.

"A bill of attainder may affect the life of an individual, or may confiscate his property, or may do both."

To quote Mr. Justice MILLER'S famous language in the case of *Loan Association* v. *Topeka*, 20 Wall., 655, 662:

"It must be conceded that there are such rights in every free government beyond the control of the state. A government which recognized no such rights, which held the lives, the liberty, and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power, is after all but a despotism. It is true it is a despotism of the many, of the majority, if you choose to call it so, but it is none the less a despotism. It may well be doubted if a man is to hold all that he is accustomed to call his own, all in which he has placed his happiness, and the security of which is essential to that happiness, under the unlimited dominion of others, whether it is not wiser that this power should be exercised by one man than by many.

"The theory of our governments, state and national, is opposed to the deposit of unlimited power anywhere. The executive, the legislative, and the judicial branches of these governments are all of limited and defined powers.

"There are limitations on such power which grow out of the essential nature of all free governments. Implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name."

In *Hurtado* v. *California*, 110 U. S., 516, 535, 536, Mr. Justice MATTHEWS said:

> "*But it is not to be supposed that these legislative powers are absolute and despotic, and that the amendment prescribing due process of law is too vague and indefinite to operate as a practical restraint. It is not every act, legislative in form, that is law. Law is something more than mere will exerted as an act of power.* * * * Arbitrary power, enforcing its edicts to the injury of the persons and property of its subjects, is not law, whether manifested as the decree of a personal monarch or of an impersonal multitude."

In *Caldwell* v. *Texas*, 137 U. S. 692, 697, Mr. Chief Justice FULLER said:

> "Law, in its regular course of administration through courts of justice, is due process, and when secured by the law of the State, the constitutional requisition is satisfied. 2 Kent Comm., 13. AND DUE PROCESS IS SO SECURED BY LAWS OPERATING ON ALL ALIKE, AND NOT SUBJECTING THE INDIVIDUAL TO THE ARBITRARY EXERCISE OF THE POWERS OF GOVERNMENT, UNRESTRAINED BY THE ESTABLISHED PRINCIPLES OF PRIVATE RIGHT AND DISTRIBUTIVE JUSTICE. *Bank of Columbia* v. *Okely*, 4 Wheat., 235, 244. THE POWER OF THE STATE MUST BE EXERTED WITHIN THE LIMITS OF THOSE PRINCIPLES, AND ITS EXERTION CANNOT BE SUSTAINED WHEN SPECIAL, PARTIAL AND ARBITRARY. *Hurtado* v. *California*, 110 U. S., 516, 535."

It is, therefore, submitted that any law, special, partial and arbitrary in its operation, escheating the private property of individuals on their death, would be declared unconstitutional.

Three cases in this Court are sometimes cited as establishing the doctrine that a state may deny the privilege of transfer by last will and testament or by inheritance; but they sustain no such proposition. The misconception of the scope of these decisions arises from confounding the conceded power to regulate inheritance and testamentary dispositions with the theory that these rights depend solely upon statute and can be wholly abrogated. The

State can regulate such transfers as it can declare who shall hold property within its borders and the manner, the form, the method of transfers *inter vivos*. But no one would, in reason, take the extreme view that this power of regulation, *e. g.*, the conveyance of lands, would enable the state to pass a law prohibiting all sales and dispositions of property or unreasonably and arbitrarily limiting the use of property. A deed may have to be under seal, with certain formalities, accompanied by the payment of a stamp tax, etc.: all this is regulation. But, to unreasonably and arbitrarily limit the use or restrain transfers even to resident citizens would be quite a different thing. It would be confiscation and not regulation.

In the first case (1850), *Mager* v. *Grima*, 8 How., 490, 493–4, the Court held that a law of the State of Louisiana imposing a tax on alien heirs or legatees was not in violation of the United States Constitution. Chief Justice TANEY delivering the opinion of the court said:

> "Every state or nation may unquestionably refuse to allow an alien to take either real or personal property, situated within its limits, either as heir or legatee, and may, if it thinks proper, direct that property so descending or becqueathed shall belong to the state. In many of the states of this Union at this day, real property devised to an alien is liable to escheat. And if a state may deny the privilege altogether, it follows that, when it grants it, it may annex to the grant any conditions which it supposes to be required by its interests or policy."

It will thus be seen that there is nothing in this case to support the doctrine that a state can escheat all property and deny to its own citizens the right to inherit or to devise. Of course, the last sentence of the quotation, separated from the context, may appear to mean what was never intended.

The second case, *United States* v. *Fox*, 94 U.

S., 315, held that a devise to the United States of real estate situated in New York was void under the local law. The question was determined according to the laws of New York, and the case involved merely the point of the validity of the limitation imposed by the state law. There was no discussion and no suggestion as to the power of the state to confiscate the property of all decedents or decedents of any particular class.

In the third case, *United States* v. *Perkins*, 163 U. S., 625, 628, the Court held that personal property bequeathed to the United States was subject to the New York inheritance tax, and that the payment of this tax was a condition of transfer which the state had a right to impose.

It has been said that succession taxes are not imposed upon property but are rather an excise duty upon peculiar rights or privileges conferred by statute. This view seems to have influenced some courts to sustain succession tax laws which, had they been held to impose burdens on property, might have conflicted with the provisions of the state constitutions.

But as Judge EARL said in regard to the New York act of 1885 taxing successions (*Matter of McPherson*, 104 N. Y., 306, 317, 318):

> "It is not very important to determine in this case whether the act of 1885 is to be regarded as imposing a tax upon property or upon the succession or devolution of property by will or intestacy. *In either case it is a special tax.* In the one case it is a tax upon the particular class of property, and in the other case a tax upon the succession or devolution of property, or the right to receive property in the cases mentioned in the statute. Whether it be one or the other it is free from constitutional objection. * * * * If this be regarded as a tax upon property, then it is free from constitutional objection if it be equally imposed and properly apportioned upon all the property of the class to which it belongs."

The Supreme Court of Pennsylvania has decided that as to real estate the act of 1887 taxing collateral inheritances is a tax upon property, and finds proof of this in the provision (to be likewise found in the Illinois act) that the tax shall be a lien upon real estate until paid (*Bittinger's Estate*, 129 Pa. St., 338). And PENROSE, J., in the recent Pennsylvania decision (December 4, 1897), said:

> "And yet we are solemnly asked to say that this is not a tax, but an excise or duty. What is an excise or duty but one species of tax?"[1]

It is, however, immaterial to determine whether the exaction be termed a *tax* or a *penalty* or a *bonus* or a *premium* or a *reservation*—whether one or another of these terms may be preferred by state courts in order to satisfy the provisions of state constitutions. The fourteenth amendment sets up a standard by which the tax or exaction shall be imposed, namely, by laws which have due regard to some rule of equality. The progressive tax now before the Court ignores that requirement.

There are only two methods by which the state governments can take private property; the one through the taxing power, the other through the right of eminent domain. The state cannot confiscate, by bill of attainder or otherwise. The fundamental distinction between these two methods is that under the taxing power, the laws and exactions must be uniform and impartial—a common contribution of burden—equally affecting all within the class or subject selected; while under the exercise of the right of eminent domain

[1] That the exaction we are now considering is a *tax* has been held by this Court in *U. S* v. *Perkins*, 163 U. S., 625, 628, and by the Illinois Supreme Court in the Drake case (record, pp. 9-10). See also *The State ex rel. Sanderson* v. *Mann*, 76 Wis., 469, 475).

particular or special property is singled out for public use and to make contributions to public purposes which are not demanded of other property of the same general character.

In *Lowell* v. *Boston*, 111 Mass., 454, 461, 462, the Supreme Judicial Court of Massachusetts used the following language:

> "The principle of this distinction is fundamental. It underlies all government that is based upon reason rather than upon force. * * * This power, when exercised in one form, is taxation; in the other, is designated as the right of eminent domain. The two are diverse in respect of the occasion and mode of exercise, but identical in their source, to wit, the necessities of organized society; and in the end by which alone the exercise of either can be justified, to wit, some public service or use."

But the power of eminent domain is conditioned upon making just compensation, so that the principle of equality shall prevail and the public burdens shall not be borne merely by specific individuals or specific property selected out of the same general class. Even without any constitutional provision of the states, this Court would hold that just compensation was essential since the fourteenth amendment went into effect (*Chicago, Burlington, etc., R'd.* v. *Chicago*, 166 U. S., 226, 238.)

VI.

AS TO THE INHERITANCE TAX LAWS IN OTHER STATES.

Laws similar to this Illinois statute have been declared to be in violation of the principle of equality, and as such held to be unconstitutional.

In New York, Pennsylvania, Massachusetts, Maine, Maryland, Montana, Virginia and North Carolina, various

kinds of laws taxing inheritances have come before the courts of last resort and have been sustained. In some of these cases, it has been held that a law taxing only collaterals and exempting direct heirs was not in violation of the requirements of uniformity, as the classification into direct heirs and collaterals was founded upon just and reasonable grounds. In others, the variation of rates of taxation between direct and collateral heirs and strangers to the blood has been sustained as proper. In all these instances, however, the rate has been uniform upon each individual in the class taxed.

Statutes imposing succession taxes upon persons classified according to their relation to the decedent, exempting comparatively small estates, and imposing a single rate have been frequently approved. (*Matter of McPherson*, 104 N. Y., 306; *Strode* v. *Commonwealth*, 52 Pa., 181; *Minot* v. *Winthrop*, 162 Mass., 113; *Wilmerding's Estate*, 49 Pac. R., 181 (California); *State* v. *Dalrymple*, 70 Md., 294; *Peters* v. *Lynchburg*, 76 Va., 927; *State* v. *Alston*, 94 Tenn., 674.)

In no case, except the decision in the Drake case, has a law levying a graduated or progressive tax rate upon the same class been sustained. Whenever this has been the clear purpose, the laws have been held to be in violation of the principle of equality. The progressive tax which is so pronounced and objectionable a feature of the Illinois statute has been held to be unconstitutional by the only other state courts of last resort by which it has been considered.

Three cases involving progressive taxation were decided by the Supreme Courts of Minnesota, Wisconsin and Ohio, respectively, before the Illinois decision, and in New Hampshire a classification exempting from the tax husband and wife, children and grandchildren was

denominated extortion in the name of taxation and the law was declared void.

The latest case upon this point is in Pennsylvania. In the Orphans' Court of Philadelphia the court *in banc* decided, December 4, 1897, that an inheritance tax far less arbitrary than the Illinois act violated the rule of uniformity and was unconstitutional, FERGUSON, J., saying :

> "Again taxes are to be uniform on the same 'class of subjects.' The class of subjects contemplated by this act is personal property by will or under the intestate laws. Now if the amount of the estate so passing is less than $5,000 it escapes taxation and if over $5,000 it is taxable. Surely this cannot be considered a uniform tax on the same class of subjects, as the amount of the personal property which is the subject of taxation determines whether it is taxable or not."

In *State* v. *Ferris*, 53 Ohio State, 314, there was involved an inheritance tax law which levied a graduated tax varying from one to six per cent., according to the amount of the estate affected, upon the class first mentioned in the Illinois law, and exempted all estates less than $20,000 in value, but did not allow the same exemption to the takers of estates exceeding $20,000 in value. The court held that the law was wholly void, first, because of the inequality resulting from the exemption of $20,000, and secondly, because it taxed at a higher rate per centum the right to receive or succeed to estates of larger value than those of smaller value. The court discussed the fourteenth amendment in the course of its decision, but held that the bill of rights in Ohio was as broad as the amendment itself and afforded adequate protection against unequal taxation.

In *State* v. *Gorman*, 40 Minn., 232, 233, 234, 235, the statute, under the guise of a fee bill for court costs,

required as a condition precedent to probate proceedings for settlement of estates, the payment to the county treasurer of specific sums, varying in amount according to the value of the estate, and not equal in proportion to such value but arbitrarily fixed on an increasing scale with reference to such value, running from $10 on $2,000 estates to $5,000 on estates of over $500,000.

The court held that the rule of uniform protection in the matter of taxation required by the state constitution was violated and declared the law unconstitutional. It said:

> "But the sums required by this act to be paid into the county treasury must be regarded as *taxes* in the ordinary sense of that word, and as it is used in the constitution. They are not in any proper sense fees or costs assessed impartially, or with regard to the expense occasioned or services performed. The amounts are regulated wholly, but arbitrarily, with regard to the value of the estate. * * * It is thus apparent that these exactions are '*taxes*,' in the general and in the precise meaning of that word, *and, if the constitutional rule of approximate equality has been disregarded, the law cannot stand.* It seems hardly necessary to refer particularly to the schedule of values and of amounts required to be paid to show that the law wholly fails, in apportioning the burden imposed, to regard the constitutional rule of equality, measured with reference to the value of the property taxed. In the first place, estates not exceeding $2,000 in value are wholly exempt from any contribution. If estates are taxable in this manner at all, such an exemption is contrary to the requirement of the constitution. (*Le Duc* v. *City of Hastings*, 39 Minn., 110.) Again, while the schedule of sums to be paid is arranged somewhat with regard to values, yet this is done arbitrarily, and not upon any rule of percentage; and the burden is very unequally distributed as measured by the standard of values. To illustrate, an estate of a little less than $50,000 pays a tax of $100, or about one-fifth of one per cent. of the value; an estate ten times larger pays a tax fifty times larger, ($5,000,) or about one per cent. of the valuation; an estate of $500,000 pays a tax of $1,000, while an estate inventoried at $500,001, $1 in excess of the former, pays a tax of $5,000. While a large discretion must be allowed to the legislature in devising schemes for taxation, so as to secure equality as nearly as

may be, it can hardly be doubted that in this case the constitutional requirement was not observed, very likely for the reason that it was not considered that these exactions were 'taxes' within the meaning of the constitution. We feel certain that they must be so regarded."

In *State* v. *Mann*, 76 Wis., 469, 480, the statute in question levied a charge of one-half of one per cent. on all estates exceeding $3,000 in any county having a population of over 150,000. Milwaukee County was the only county to which the act was applicable. The court held the act void, first, as to the territorial limitation, and secondly, as to the exemption of all estates below $3,000 in value.

In *Curry* v. *Spencer*, 61 N. H., 624, 631, 632, the statutes levied a tax of one per cent. on all estates except those passing to husband or wife, children or grandchildren. The court held the law unconstitutional because it violated the provisions of the constitution and bill of rights limiting the power of the legislature to levying only proportionate and reasonable taxes. Said the court :

"All measures for the imposition or collection of taxes must therefore conform to this general principle of just equality; and hence it is immaterial whether the tax imposed by c. 64 is to be regarded as a tax on property or upon a civil right or privilege, for the same principle of equality and due proportion applies to every species of tax alike. * * * We therefore go no further than to say, that if the legislature deems it expedient to defray the expense of probate courts by a tax upon the recipients of estates therein adjudicated, such tax must be proportional and constitute only the just share of those upon whom it is imposed ; that it cannot lawfully make discriminations and cast the burden upon one class of beneficiaries, and exempt all other classes from its operation ; and that it cannot, therefore, for purposes of taxation, exempt legacies and successions to husband, wife, children, and grandchildren, and include only those by the collaterals and others than those specified.

It is true that this form of tax comes down from antiquity (Gibbon's Decline and Fall of the Roman Empire, c. 6), and

that the tax commissioners of this State, by whom it was recommended, say that there can be no question of the legal right to impose it (Report, p. 31); but nevertheless, we entertain a contrary opinion, because, under the reservations of the bill of rights and the limitations of the constitution, it is plainly founded upon pure inequality and is simply extortion in the name of taxation; and it can therefore never be sustained in this jurisdiction so long as equality and justice continue to be the basis of constitutional taxation."

In *State* v. *Hamlin*, 86 Maine, 495, 505, the Supreme Judicial Court of Maine said :

"It (the legislature) may limit heirship to lineal descendants, to the absolute exclusion of all collaterals. If it permits, as our laws now do, collateral kindred to inherit, no reason is perceived why the State is debarred from exacting an excise or duty from such collateral, for such privilege allowed by the State. *It is necessary to make such excise uniform as to the entire class of collaterals. It must not tax one and exempt another in the same class.* But it is not a violation of this principle to require an excise from all collaterals and strangers, and exempt from the excise classes nearer in blood to the decedent.

In *Gelsthorpe* v. *Furnell* (as yet unreported), decided by the Supreme Court of Montana at the October Term, 1897, an inheritance tax at a fixed rate on every $100 of the value of successions, exempting estates of a less value than $7,500, was sustained. The court did not regard this exemption as introducing the feature of progression, but as a reasonable and proper classification. The court said :

"The Legislature is not prevented by the Constitution from the exercise of discretion as to what classes of rights or privileges it may enumerate as subject to taxation, *provided always the tax imposed is uniform in its application to all rights and privileges within the classes defined;* and *provided further, we take it, that any classification made is based upon a reasonable and not a mere arbitary ground.*"

In New York there is no progression and only a small and reasonable exemption. In construing the

act of 1885 in that state, the Court of Appeals, by EARL, J., said (*Matter of McPherson* 104 N. Y., 306, 318):

> "If this be regarded as a tax upon property, then it is free from constitutional objection *if it be equally imposed and properly apportioned upon all the property of the class to which it belongs.*"

And, in the subsequent case of *Matter of Estate of Sherwell*, 125 N. Y., 376, 379, GRAY, J., said:

> "As the tax is made to apply to every estate, which is bequeathed or devised to, or inherited by, the persons specified in the act, *it is equal and, therefore, free from objection on legal grounds.*"

The sharpest criticism of the Illinois Act comes from the Supreme Court of Colorado, which in answer to a request from the Legislature for an opinion on a pending bill said (*In re House Bill No. 122*, 48 Pac. R., 535):

> "THE STATUTE OF THE STATE OF ILLINOIS, FROM WHICH THIS BILL IS MAINLY TAKEN, IS ONE OF THE MOST OBJECTIONABLE ACTS UPON THE SUBJECT TO BE FOUND."

In Missouri the tax of 1895 was progressive, but the progressive feature was promptly repealed (Act of March 17, 1897, Laws, p. 236). In Louisiana, the tax on foreign heirs is uniform and contains no exemptions (Laws 1894, p. 165); nor is there any exemption or progression in Virginia (Laws 1895–6, Ch. 334).

Another instance of progressive or graduated taxation reported was in Georgia where a tax of $150 was levied by city ordinance on merchants whose annual sales were between $75,000 and $100,000; of $200 on those whose sales were between $100,000 and $200,000, and of $300 on those whose sales exceeded $200,000.

The Supreme Court of Georgia in *Johnston* v. *Macon*, 62 Ga., 645, 651, held the act unconstitutional for the reason that it was "against the spirit of the constitution of 1877, and might result in great inequality and injustice." *In re Yot Sang*, 75 Fed. Rep., 983, 985, the court held an ordinance which provided a tax of $15 on steam laundries and $25 on all others violative of the fourteenth amendment.

VII.

PROGRESSIVE OR GRADUATED TAXATION IS ARBITRARY AND ANY LAW IMPOSING IT IS NECESSARILY UNEQUAL IN ITS OPERATION.

The merits of this controversy cannot be appreciated without bearing in mind how intimately connected and interwoven are the science of government and the principles of taxation. This power to tax is not only the strongest and the most pervading of all powers of government, but the most liable to abuse. The highest attribute of the sovereignty of government is the taxing power, and when we discuss it we enter the realm of practical statesmanship, and must be influenced in great measure by considerations of politics in the grandest signification. In the service of politics thus presented, this Court applies the great principles of government which with us rest upon solid foundations of truth, justice and equality, and in the light of such considerations, solves the problems of statesmanship constantly arising. These questions must finally be determined by this tribunal since

the Constitution has made it the arbiter to enforce the protection of equal laws, and has ordained that its decisions shall be the supreme law of the land.

If progressive taxation is in its essence arbitrary and in its tendency destructive of the American system of equality before the law, the Court will not hesitate to stay the dangerous policy at its beginning. In the broad view of the true statesman, the rule by which taxes are apportioned is not for a day or a party, but for all time. There can be no stability or progress where there is no security or confidence, and there can be no security and confidence under a government which imposes unequal and inequitable taxes.

As Hamilton said in one of his papers (The Continentalist, Hamilton's Works, Vol. 1, p. 270):

> "THE GENIUS OF LIBERTY REPROBATES EVERYTHING ARBITRARY OR DISCRETIONARY IN TAXATION."

Although many writers and philosophers of the school of Rousseau have written in favor of progressive or graduated taxation in order, as some frankly avow, to level property and to force redistribution of wealth,[1] yet thoughtful and broad-minded statesmen and political economists have repeatedly shown that the progressive or graduated tax is the most arbitrary form of taxation, vicious in principle and dangerous in tendency. Thus, Mr. Lecky, one of the most eminent of living historians, in his latest work (Democracy and Liberty, Vol. 1, p. 286, *et seq.*), says:

> "It is obvious that a graduated tax is a direct penalty imposed on saving and industry, a direct premium offered to idleness and extravagance. * * * It is at the same time perfectly arbitrary. When the principle of taxing all fortunes on the same rate of computation is

[1] Seligman on Progressive Taxation, p. 67.

abandoned, no definite rule or principle remains. At what point the higher scale is to begin, or to what degree it is to be raised, depends wholly on the policy of Governments and the balance of parties. The ascending scale may at first be very moderate, but it may at any time, when fresh taxes are required, be made more severe, till it reaches or approaches the point of confiscation. No fixed line or amount of graduation can be maintained upon principle, or with any chance of finality. The whole matter will depend upon the interests and wishes of the electors ; upon party politicians seeking for a cry and competing for the votes of very poor and very ignorant men. Under such a system all large properties may easily be made unsafe, and an insecurity may arise which will be fatal to all great financial undertakings. The most serious restraint on parliamentary extravagance will, at the same time, be taken away, and majorities will be invested with the easiest and most powerful instrument of oppression. Highly graduated taxation realizes most completely the supreme danger of democracy, creating a state of things in which one class imposes on another burdens which it is not asked to share, and impels the State into vast schemes of extravagance, under the belief that the whole cost will be thrown upon others.

The belief is, no doubt, very fallacious, but it is very natural, and it lends itself most easily to the claptrap of dishonest politicians. Such men will have no difficulty in drawing impressive contrasts between the luxury of the rich and the necessities of the poor, and in persuading ignorant men that there can be no harm in throwing great burdens of exceptional taxation on a few men, who will still remain immeasurably richer than themselves. Yet no truth of political economy is more certain than that a heavy taxation of capital, which starves industry and employment, will fall most severely on the poor. Graduated taxation, if it is excessive or frequently raised, is inevitably largely drawn from capital. It discourages its accumulation. It produces an insecurity which is fatal to its stability, and it is certain to drive great masses of it to other lands. * *

It is, however, sufficiently clear that any financier who enters on this field is entering on a path surrounded with grave and various dangers. Graduated taxation is certain to be contagious, and it is certain not to rest within the limits that its originators desired."

In McCulloch on Taxation, pp. 141, *et seq.* (London, 1845) the author says :

" It is argued that, in order fairly to proportion the tax to

the ability of the contributors, such a graduated scale of duty should be adopted as should press lightly on the smaller class of properties and incomes, and increase according as they become larger and more able to bear taxation. We take leave, however, to protest against this proposal, which is not more seductive than it is unjust and dangerous. * * If it either pass entirely over some classes, or press on some less heavily than on others, it is unjustly imposed. Government, in such a case, has plainly stepped out of its proper province, and has assessed the tax, not for the legitimate purpose of appropriating a certain proportion of the revenues of its subjects to the public exigencies, but that it might at the same time regulate the incomes of the contributors ; that is, that it might depress one class and elevate another. The toleration of such a principle would necessarily lead to every species of abuse. That equal taxes on property or income will be more severely felt by the poorer than by the richer classes is undeniable ; but the same is true of every imposition which does not subvert the subsisting relations among the different orders of society. * * Let it not be supposed that the principle of graduation may be carried a certain extent, and then stopped. * * In such matters the maxim of *obsta principiis* should be firmly adhered to by every prudent and honest statesman. Graduation is not an evil to be paltered with. Adopt it and you will effectually paralyse industry and check accumulation ; at the same time that every man who has any property will hasten, by carrying it out of the country, to protect it from confiscation. The savages described by Montesquieu, who to get at the fruit cut down the tree, are about as good financiers as the advocates of this sort of taxes. Wherever they are introduced security is at an end. Even if taxes on income were otherwise the most unexceptionable, the adoption of the principle of graduation would make them about the very worst that could be devised. The moment you abandon, in the framing of such taxes, the cardinal principle of exacting from all individuals the same proportion of their income or of their property, you are at sea without rudder or compass, and there is no amount of injustice and folly you may not commit."

In the *North American Review* (Vol. 130, pp. 238–239), the well-known writer David A. Wells says :

" Equality of taxation of all persons and property brought into open competition under like circumstances is necessary, to produce equality of condition for all, in all production, and in all the enjoyments of life, liberty, and property. Any

> government, whatever name it may assume, is a despotism, and commits acts of flagrant spoliation, if it grants exemptions or exacts a greater or less rate of tax from one man than from another man on account of his owning or having in his possession more or less of the same class of property which is the subject of the tax."

Professor Bastable is one of the leading authorities in England at the present day. In his recent work on "Public Finance" (1895), he discusses the reasons for the popularity of progressive taxation and points out the dangerous tendency and the objections to such a system. Thus at pp. 292, 293, 294, 555, the author says:

> "It is entirely arbitrary. The possible scales are infinite in number, and no simple and intelligible reason can be assigned for the selection of one in preference to its competitors. * * * There is no self-acting principle by which to determine the scale of progression. * * * All depends on the will of the legislature, *i. e.* in most modern societies, on the votes of persons who will not directly feel the charges placed on the higher incomes and will probably believe that they will be gainers by them."
>
> "But behind any actual scale of progression lies the unavoidable danger of arbitrary extension in the future. There is as yet no limiting principle discovered which will determine up to what point progressive death-duties shall be carried, and at which their advance should cease. Appeals to the supposed natural rights of owners, or to the equally imaginary rights of the State, can supply no solution of this problem."

The French writer and statesman, Leroy-Beaulieu, is probably the leading authority in Europe upon questions of finance and taxation. In his work "Traité d'Economie Politique" (1896, vol. IV, pp. 748–767), he examines and discusses at length progressive or graduated taxation, and condemns it as vicious in theory, as not based upon any rational ground, and as springing solely from sentiment and prejudice. He also shows that the theory de-

parts radically from the principle of equality and begets attempts to correct social inequalities through taxation. In the course of an exhaustive discussion of the subject of progressive taxes on property, the author says (pp. 750, 764):

> "Progressive taxation constitutes actual spoliation. It violates, besides the rule, established by all civilization, that taxation ought to be imposed with the full consent of the taxpayer; for, it is quite clear, that in this case, it is the mass of the voters who relieve themselves of the heavy weight of the tax and cast it upon the few, and these few do not consent, even tacitly, to the excess with which the government wishes to burden them. When the rate of the tax is equal for all, we can consider that the vote for the tax by the Legislature carries with it the implied acquiescence of all the assessable; otherwise not. * *
>
> "Every system of progressive taxation, however attenuated, is iniquitous and dangerous."[1]

And in his standard work, "Science des Finances," the same author says (Vol. I, pp. 139–140):

> "Thus, the theory of progressive taxation is not rational; it is not the result of any accurate analysis of practicable experience; it is superficial; it is not a scientific doctrine.
>
> The theory, moreover, is dangerous, because departing from the principle of equality of sacrifice, its irresistible tendency is to seek the correction of social inequalities; and there is in that tendency a fatal allurement."[2]

Another French writer Paul Beauregard in his

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[1] "L'impôt progressif constitue une véritable spoliation. Il viole de plus la règle, établie par toute la civilisation, que l'impôt doit être librement consenti par le contribuable: car, il est bien clair que, dans ce cas, c'est la masse des contribuables qui rejette le gros poids de l'impôt sur quelques-uns, et que ceux-ci ne consentent pas, même tacitement, à la surcharge dont on veut les grever. Quand le taux de l'impôt est égal pour tous, on peut considérer que le vote de l'impôt par les Chambres comporte un acquiescement implicite de tous les contribuables; autrement, non. * *

"Tout système d'impôt progressif, si atténué qu'il soit, est inique et dangereux."

[2] "Ainsi, la théorie de l'impôt progressif n'est pas rationnelle; elle ne sort pas d'une analyse exacte des faits sociaux; elle est superficielle; elle n'est pas une doctrine scientifique.

"Cette théorie est en outre dangereuse, parce que, partant du principe de l'égalité de sacrifice, elle a une tendance invincible à vouloir corriger les inégalités sociales; il y a là un entraînement qui est fatal."

work on "Eléments d'Economie Politique" discusses the defects of graduated taxation and says (p. 313):

> "This system, extolled even to-day in certain quarters, has in times past led astray great thinkers like Montesquieu and J.-B. Say. It is exposed, however, to very grave criticisms. It is unjust, for it does not proportion the charge to the benefit received, and imposes upon some expenses which must benefit others; a disadvantage particularly serious in a country of universal suffrage, where the public expenditures are voted by the representatives elected by all the citizens. It is dangerous, because, absorbing a considerable portion of the large incomes, it tends to discourage the spirit of enterprise and the taste for economy. Finally, it is arbitrary, for we cannot determine rationally the graduation capable of equalizing the charges imposed on each individual."[3]

In the "Dictionnaire d'Economie Politique," Réné Stourm writes (Vol. II, p. 21):

> "On the one side graduation, abandoned to itself, results more or less in spoliation. On the other side, if the governments wish to correct the excessive play of its natural tendency, arbitrary despotism becomes the only rule. Spoliation or arbitrary despotism would be the final results of graduated taxation."[4]

He then discusses the subject of progressive inheritance taxes and shows that they necessarily involve an attack upon the natural right to dispose of property, and that if we concede such a position, the legislature then may at its will destroy the right, and adds (pp. 24, 25):

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[3] "Ce système, encore préconisé aujourd'hui dans certains milieux, a séduit jadis de grands penseurs comme Montesquieu et J.-B. Say. Il prête pourtant aux critiques les plus graves. Il est injuste, car il ne proportionne pas la charge au bénéfice obtenu et rejette sur les uns les dépenses qui doivent profiter aux autres : inconvénient particulièrement grave dans un pays de suffrage universel, où les dépenses publiques sont votées par des députés nommés par tous les citoyens. Il est dangereux, car, absorbant une forte portion des gros revenus, il tend à décourager l'esprit d'entreprise et le gôut de l'épargne. Enfin il est arbitraire, car on ne peut déterminer rationellement la progression susceptible d'égaliser les charges imposées à chacun."

[4] "D'une part, la progression, livrée à elle-même, aboutit plus ou moins à la spoliation. D'autre part, si les gouvernments veulent corriger le jeu excessif de son méchanisme spontané, l'arbitraire devient la seule règle. Spoliation ou arbitraire, tels seraient donc les derniers mots de l'impôt progressif."

"Such are the possible consequences of the progressive system : the leveling of fortunes, the abolition of inheritances ; in a word, arbitrary spoliation masking itself by a tax law. * *

"During the Revolution forced and graduated loans absorbed the whole of the incomes that were classified as superfluous ; they took fifty per cent of the 'abundant' incomes, and one hundred per cent. of the 'superfluous' incomes. Renewed on three different occasions in 1793, 1795 and 1799, these progressive loans provoked so many recriminations, so much injustice and suffering, that the renewal of public discontent which preceded the *coup d'État* of the 18th of Brumaire was attributed to a large extent to the last of these. Such are the extreme dangers which justly make us recoil before even the moderate application of the principle of progression."[5]

It is true that many writers (*e. g.*, Mill) argue that inheritance or succession taxes present different considerations, but their views when carefully considered, fail to show any sound distinction. If it be dangerous and arbitrary to impose a progressive tax on property, surely the same rule exists when imposing a progressive tax on the privilege or right of succeeding to property. In the one case we have a tax on property ; in the other a tax or excise duty on a privilege. In both cases the exaction is under the power of taxation ; and such exaction must be under equal laws impartially administered.

The extreme to which the theory of progressive inheritance taxation, if sanctioned, would shortly carry us may be seen by a bill presented to the Illinois Legislature in 1887 seeking to reform the Statutes of Descent and Wills. The object of that bill was to

[5] "Telles sont donc les conséquences possibles du système progressif : nivellement des fortunes, abolition des héritages, en un mot, spoliation arbitraire s'abritant derrière un tarif fiscal. * * *

"Sous la Révolution, les emprunts forcés et progressifs absorbèrent la totalité des revenus qualifiés de superflu ; ils prirent 50 p. 100 des revenus *abondants* et 100 p. 100 des revenus superflus. Renouvelés à trois reprises différentes, en 1793, 1795 et 1799, ces emprunts progressifs provoquèrent tant de récriminations, d'injustices et de souffrance qu'on attribua, en grande partie, au dernier d'entre eux la recrudescence de mécontentement public qui précèda le coup d'État du 18 Brumaire. Ce sont là les dangers extrêmes qui, à juste titre, font reculer devant l'application, même moderée, du principe de la progression."

restrict the amount any person or corporation might take from a decedent and to compel the distribution of wealth or confiscate the surplus for the benefit of the state. The wife, husband or child was not to be allowed to inherit more than $500,000, and remote relatives and others not more than $100,000. In reference to this bill, Mr. DosPassos in his work on the Inheritance Tax Law (1st ed., p. 5) says:

> "Such legislation would appear impracticable, or, at least, not consistent with the freedom of American institutions where private rights and property are concerned, though it has been endorsed by Mill, who agreed that collateral heirs should be entirely excluded."

VIII.

SOME OF THE DECISIONS IN THE STATE COURTS RECOGNIZING THE REQUIREMENT OF EQUALITY IN THE LEVYING OF TAXES.

In the state courts, the subject of equality in taxation has been repeatedly discussed and held to mean that taxes must be levied according to some fixed rate or rule of apportionment, so that all persons shall under like circumstances pay the like rate upon similar kinds of property according to the value thereof. A reference to a few of the cases in the highest courts may be interesting. These cases recognize the just and reasonable rule, which is said to have become fundamental in our American system of taxation, that the burden of taxes shall fall equally upon all owners of the same kind of property. They

enforce the principle that the inherent and fundamental nature and character of a tax is a proportionate and equitable contribution to the support of the government; that any other exaction does not come within the legal definition of a tax; and that equality in bearing the common burden is the only sound and constitutional practice.

In Cooley on Taxation (2d Ed.), pp. 2–3, 169–170, the author says:

> "In an exercise of the power to tax, the purpose always is, that a common burden shall be sustained by common contributions, regulated by some fixed general rule, and apportioned by the law according to some uniform ratio of equality. The power is not therefore arbitrary, but rests upon fixed principles of justice, which have for their object the protection of the taxpayer against exceptional and invidious exactions, and it is to have effect through established rules operating impartially. * *
>
> "But when, for any reason, it becomes discriminative between individuals of the class taxed, and selects some for an exceptional burden, the tax is deprived of the necessary element of legal equality, and becomes inadmissible. It is immaterial on what ground the selection is made: whether it be because of residence in a particular portion of the taxing district, or because the persons selected have been remiss in meeting a former tax for the same purpose, or because of any other reason, plausible or otherwise; for if the principle of selection be once admitted, limits cannot be set to it, and it may be made use of for the purposes of oppression, or even of punishment."

In *Davis* v. *Litchfield*, 145 Ill., 313, 327, the Supreme Court of Illinois said:

> "It is of the essence of a tax, that it shall be levied for a public purpose, and shall be uniform in respect of persons and property within the taxing district, whether that be the State, county, municipality, or district thereof, created for local improvement, and that it be laid according to some fixed rule of apportionment. 'Equality,' says Mr. Desty (1 Desty on Tax., 29), 'in the imposition of the burden, is of the very essence of the right, and though absolute equality, and absolute justice, may not be attainable, the adoption of some rule tending to

that end is indispensable. Equality, as far as practicable, and security of property against irresponsible power, are principles which underlie the power of taxation, as declared ends and principles of fundamental laws.' (Dillon on Mun. Cor., 587, and notes.)

"In the idea of a tax, it is inherent that it shall be upon some system of apportionment, securing practical uniformity among those subject to it."

In *Stuart* v. *Palmer*, 74 N. Y., 183, 189–190, EARL, J., said:

"A tax or assessment upon property arbitrarily imposed, without reference to some system of just apportionment, could not be upheld. * * Taxation and assessment imply apportionment. Each person must share the burdens of taxation and assessment equally with all others in like situation. * * This provision [due process of law] is the most important guaranty of personal rights to be found in the Federal or State Constitution. It is a limitation upon arbitrary power and is a guaranty against arbitrary legislation."[1]

In *Hammett* v. *Philadelphia*, 65 Pa. St., 146, 153, the Supreme Court of Pennsylvania said:

"The dollar which a poor man has earned by the sweat of his brow—the fortune which a rich man has inherited from his ancestors—stand on the same rock, and are surrounded and protected by the same barrier. Invested for comfort and assurance against want in sickness or old age, or cherished as a provision for widow or orphan after he has gone, it is a right which it is despotism to take from him, except for the necessary purposes of government by equal and just taxation."

And the same court in the subsequent case of *In re Washington Avenue*, 69 Pa. St., 352, 363, 364, said:

"There is a clear implication from the primary declaration of the inherent and indefeasible right of property, followed by the clauses guarding it against specific transgressions, that covers it with an ægis of protection against all unjust, unreasonable and palpably unequal exactions under any name or pretext. * * * Laws which cast the burdens of the public on a few individuals, no matter what the pretence, or how seem-

[1] See also *People* v. *Equitable Trust Co.*, 96 N. Y., 387, 395.

ing their analogy to constitutional enactments, are in their essence despotic and tyrannical, and it becomes the judiciary to stand firmly by the fundamental law, in defence of those general, great, and essential principles of liberty and free government, for the establishment and perpetuation of which the Constitution itself was ordained."

In re Opening of Ruan Street, 132 Penna. St., 257, 277, 279, Mr. Justice WILLIAMS said:

"These are the civil rights of the citizen of Pennsylvania as such, and they are not affected by the size of the town in which he lives, or the value of his land, any more than by the color of his skin. They are the safeguards provided by the constitution for the protection of the weak as well as the strong, the dweller in the country as well as the resident in 'cities of the first class,' and no system of classification of cities or other divisions of the state can disturb them. * * Local laws, providing different rates for different parts of the state, would be a violation of the constitution, and the duty of the courts to declare them absolutely void would be plain and imperative. So, the manner in which taxes shall be levied and collected, and at what rate, are legislative questions. Whether the law be wise or unwise, easy or severe in its operation, the courts cannot interfere, so long as it is general and uniform, but a tax of ten cents on the dollar of the last-adjusted valuation of the valuable real estate in cities of the first class, and of ten mills on the valuation of property in the rest of the state, would violate the constitution. Whether a law imposing such unjust and unequal taxes shall be executed, is a judicial question."

In *Knowlton* v. *Supervisors of Rock County*, 9 Wis., 410, 421, 422, 423, the Supreme Court of Wisconsin said:

"It was contended in argument that as those provisions fixed one uniform rate without the recorded plats and another within them, thus taxing all the property without alike, and all within alike, they do not infringe the constitution. In other words, that, for the purpose of taxation, the legislature have the right arbitrarily to divide up and classify the property of the citizens, and having done so, they do not violate the constitutional rule of uniformity, provided all the property within a given class is rated alike.

"The answer to this argument is, that it creates different *rules* of taxation to the number of which there is no

limit, except that fixed by legislative discretion, while the constitution establishes but one fixed, unbending, uniform rule upon the subject. It is believed that if the legislature can, by classification thus arbitrarily and without regard to value, discriminate in the same municipal corporation between personal and real property within, and personal and real property without, a recorded plat, they can also, by the same means, discriminate between lands used for one purpose and those used for another; such as lands used for growing wheat and those used for growing corn, or any other crop; meadow lands and pasture lands; cultivated and uncultivated lands; or they can classify by the description, such as odd numbered lots and blocks, and even numbered ones, or odd and even numbered sections Personal property can be classified by its character, use or description, or as in the present case, by its *location*, and thus the *rules* of taxation may be multiplied to an extent equal in number to the different kinds, uses, descriptions and locations of real and personal property. We do not see why the system may not be carried further and the classification be made by the character, trade, profession or business of the owners. For certainly this rule of uniformity can as well be applied to such a classification as any other, and thus the constitutional provision be saved intact Such a construction would make the constitution operative only to the extent of prohibiting the legislature from discriminating in favor of particular individuals, and would reduce the people, while considering so grave and important a proposition, to the ridiculous attitude of saying to the legislature, 'you shall not discriminate between single individuals or corporations, but you may divide the citizens up into different classes as the followers of different trades, professions, or kinds of business, or as the owners of different species or descriptions of property, and legislate for one class and against another, as much as you please, provided you serve all of the favored or unfavored classes alike;' thus affording a direct and solemn constitutional sanction to a system of taxation so manifestly and grossly unjust, that it will not find an apologist anywhere, at least outside of those who are the recipients of its favors. We do not believe the framers of that instrument intended such a construction, and therefore cannot adopt it."

In *Woodbridge* v. *City of Detroit*, 8 Mich., 274, 301, 302, the Supreme Court of Michigan said:

"To compel individuals to contribute money or property to the use of the public without reference to any common ratio, and without requiring the sum paid by one piece or kind of property, or by one person, to bear any relation whatever to that paid by another, is, it seems to me, to levy a forced con-

tribution, not a tax, duty or impost, within the sense of these terms as applied to the exercise of powers by any enlightened or responsible government."

And in the subsequent case of *The People* v. *Salem*, 20 Mich., 452, 474, 475, the same court said :

"Equality in the imposition of the burden is of the very essence of the power itself, and though absolute equality and absolute justice are never attainable, the adoption of some rule tending to that end is indispensable. *Weeks* v. *Milwaukee*, 10 Wis., 258 ; *Ryerson* v. *Utley*, 16 Mich., 269 ; *Merrick* v. *Amherst*, 12 Allen, 504.

"3. As a corollary from the preceding, if the tax is imposed upon one of the municipal subdivisions of the state only, the purpose must not only be a public purpose, as regards the people of that subdivision, but it must also be local, that is to say, the people of that municipality must have a special and peculiar interest in the object to be accomplished, which will make it just, proper and equitable that they should bear the burden, rather than the state at large, or any more considerable portion of the state. *Wells* v. *Weston*, 22 Mo., 384 ; *Covington* v. *Southgate*, 15 B. Mon., 491 ; *Morford* v. *Unger*, 8 Iowa, 82.

"The three principles here stated are fundamental maxims in the law of taxation. They inhere as conditions in the power to impose any taxes whatsoever, or to create any burden for which taxation is to provide ; and it is only when they are observed that the legislative department is exercising an authority over this subject which it has received from the people, and only then is that supreme legislative discretion of which the authorities speak called into action."

In *Lexington* v. *McQuillan's Heirs*, 9 Dana, (Ky.), 513, 517, the Supreme Court of Kentucky said :

"The distinction between constitutional taxation, and the taking of private property for public use by legislative will, may not be definable with perfect precision. But we are clearly of the opinion that, whenever the property of a citizen shall be taken from him by the sovereign will, and appropriated, without his consent, to the benefit of the public, the exaction should not be considered as a tax, unless similar contributions be made by that public itself, or shall be exacted rather by the same public will, from such constituent members of the same community generally, as own the same kind of property. Taxation and representation go together. And representative responsibility is one of the chief conservative principles of our form of government. When taxes are levied,

therefore, they must be imposed on the public in whose name and for whose benefit they are required, and to whom those who impose them are responsible. And although there may be a discrimination in the subjects of taxation, still persons in the same class, and property of the same kind, must generally be subjected alike to the same common burden. This alone is *taxation*, according to our notion of constitutional taxation in Kentucky."

In *State* v. *Express Co.*, 60 New Hamp., 219, 236, 252, 253, 263, the Supreme Court of New Hampshire said:

"If, then, equality and justice is the basis of all constitutional taxation, a statute founded on any other principle cannot be upheld. It is true that absolute equality of taxation cannot in all cases, perhaps not in any case, be attained; but if the inequality results from the inherent difficulty in applying the law, and not from the law itself, we cannot declare the law unconstitutional, and arrest the course of legislation. * * * To the extent of its inequality, a disproportional division of public expense is an uncompensated and unauthorized transfer of private property, for a private purpose, from those who bear more than their shares of the common burden to those who bear less than their shares. *Morrison* v. *Manchester*, 58 N. H., 538, 550. * * * * Under our constitution, the power to tax is a power not to destroy the right of property by a discriminating process of classification or selection, but to equitably defray the expense of protecting the right of property and other rights. * * * * It [the statute under consideration] is a tax which one class of men are required to pay, and from which all others are exempt. It is a perfect example of unequal division of public expense. It does not tend towards equal right by any degree of approximation, but is as distant as possible from it, and diametrically opposite to it. It is inequality, pure and simple."

In *State* v. *Township of Readington*, 36 N. J. L. 66, 70, the Supreme Court of New Jersey said:

"A tax upon the persons or property of A, B and C individually, whether designated by name or in any other way, which is in excess of an equal apportionment among the persons or property of the class of persons or kind of property subject to the taxation, is, to the extent of such excess, the taking of private property for a public use without compensation. The process is one of confiscation and not of taxation."

In *Exchange Bank of Columbus* v. *Hines*, 3 Ohio St., 1, 15, the Supreme Court of Ohio said:

> "Uniformity in taxing implies equality in the burden of taxation; and this equality of burden cannot exist without uniformity in the mode of the assessment, as well as in the rate of taxation."

In *Mayor* v. *Dargan*, 45 Ala., 310, 320, the Supreme Court of Alabama said:

> "Such taxes, to make them just, must be in proportion to the value of the property upon which the burden is imposed, and they must be levied upon all, and not upon a few only. This is said to be an inherent principle of all taxation. It is the limit that use affixes to the word. If this, then, is not a tax in the just and proper sense of that word, it is a seizure of the private property of the citizen for public use, without his consent, and without first making to the owner just compensation for the same. This the Constitution of the State forbids."

The above cases have been cited to show the extent to which the state courts have gone in recognizing that the principle of equality of burden or just apportionment is of the very essence of the power of taxation itself, and that some rule tending to such equality is indispensable. Some of these cases were determined under state constitutions providing for uniformity in taxation, but nevertheless they furnish complete analogies upon the subject of taxation, in construing the fourteenth amendment and its requirement of equal laws upon every subject.

IX.

THE PROVISION EXEMPTING LEGACIES OF $20,000 AND ESTATES FOR LIFE OR FOR A TERM OF YEARS IS ARBITRARY AND UNREASONABLE AND A LAW GRANTING SUCH EXEMPTIONS VIOLATES THE RULE OF EQUALITY.

A.

The Illinois Inheritance Law, as has been stated, exempts all near relatives whose legacies do not exceed $20,000. Although the estate may consist of several hundred thousand dollars, any testator can avert the tax by parcelling his estate into legacies of $20,000. The legatee receiving $20,000 may have great wealth, but he nevertheless is entitled to the exemption. Estates for life or for a term of years in real or personal property may be of immense value and represent enormous incomes, but they are wholly exempted, if bequeathed or devised to the exempted class. The exempted class is large, and will ordinarily include many persons. An exemption of twenty involving $400,000 would not be unusual. The greater portion of the property in the state passing to near relatives is freed from the tax. Every element which has justified exemptions in other cases is lacking in the Illinois statute.

The power of the state legislatures to grant reasonable exemptions need not be questioned. Such exemptions, however, like any other classification or regulation, must proceed "within reasonable limits and general usage" and be warranted by some public policy, and gross exemptions "especially such as are of an unusual character, unknown to the practice of our governments, might be obnoxious to the constitutional prohibition."[1]

[1] See language of Mr. Justice BRADLEY in *Bell's Gap Rd. Co. v. Pennsylvania*, 134 U. S., 232, 237

In the Illinois act the legislature has granted exemptions which exceed in amount those of any tax law ever passed.

In Massachusetts (*Minot* v. *Winthrop*, 162 Mass., 113, 124) the exemption is of *estates* of $10,000, and the Supreme Court of that state thought, as expressed in the prevailing opinion, that "the exemption in the statute under consideration is certainly large as an exemption of estates." This exemption called forth the denunciation and dissent of LATHROP, J. (pp. 129–130), viz.:

> "So far as I am aware, no excise tax heretofore passed in this Commonwealth has contained any exemptions. Assuming that reasonable exemptions may be allowed, it seems to me that the Legislature in the statute now before us has so far exceeded its powers that the exemptions should be considered so unreasonable, and to work so great an inequality that the act should be pronounced unconstitutional."

Thus, the Supreme Court of Massachusetts sustained an exemption which it admitted was large, but which it could not affirm was unreasonable. But what shall be said of the exemption of the Illinois act, which is not only twice as large at the very least as that of Massachusetts, but may be twenty times larger. The Massachusetts exemption is at least certain—$10,000—no more. The $20,000 exemption of the Illinois act is merely a minimum—the maximum will depend on the number of a decedent's legatees. The act provides that when the beneficial interests in any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son, or husband of the daughter, or any child or children adopted as such in conformity with the laws of the state of Illinois, or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged

relation of a parent, or to any lineal descendant born in lawful wedlock, the tax is to be levied only upon the excess of twenty thousand dollars received by each person. As to life estates and estates for years whether of real or personal property, the exemption will represent enormous amounts. In Illinois the common law rule as to perpetuities obtains, namely, any number of lives in being with twenty-one years and the period of gestation added. Estates for years frequently are made for very long periods, such as ninety-nine years, and there is no limit thereon. What just reason can there be for exempting such estates for life and for a term of years, but taxing the devisee of the fee which may be no more valuable than a term of years.

In the other states, the exemption is small and reasonable, based on the *estate* of the decedent and ranging from $200 in Ohio, $250 in Pennsylvania and $500 in Maryland, Delaware, California, Maine and New Jersey, to $1,000 in West Virginia and Connecticut (Dos Passos Inheritance Tax Law, 2 ed., pp. 80–91), and $2,000 in Vermont.

In New York under the act of 1892, now in force, the exemption of $10,000 to lineals and others is upon the aggregate value of the testator's estate passing to taxable persons, whether of the lineal or collateral class, and is not affected by the size of the individual shares (*Matter of Hoffman*, 143 N. Y., 327, 331; Dos Passos, pp. 81, 139). In Michigan the exemption is $5,000. The exemption in Wisconsin was of estates of $3,000, and was one of the grounds upon which the court held the act unconstitutional and void, viz., that the tax was "limited to a certain class of estates" (*The State ex rel. Sanderson* v. *Mann*, 76 Wis., 469, 480).

Exemptions of lineals and other next of kin of the first blood will be found in the legislation of nearly all the states, and, as has been stated, this distinction between lineals and collaterals, etc., has been sustained as reasonable and equitable. If the Illinois statute had taxed only collaterals and exempted the whole class of lineals, the exemption or classification might have been sustained. But having selected lineals as a class, it is insisted that the entire class must be taxed equally; that one cannot be taxed and another exempted in the same class, and that the exemption of life estates and estates for years is wholly indefensible. If classification is unconstitutional which seeks to subject to any particular tax "all men possessed of a certain wealth,"[1] then it should be equally in conflict with the requirements of the fourteenth amendment to subject to a succession tax only those succeeding to large amounts.

The fallacy of the arguments in favor of this exemption lies in assuming that as the whole class of direct heirs may be exempted by not being classified and taxed, the greater includes the less, and that therefore any exemption, however unreasonable and unnecessary, is within the discretion of the legislature. Such an argument would justify any exemption, however gross or arbitrary.

A tax law which contains arbitary exemptions cannot, of course, be termed equal in any sense. While the power to exempt has been stated to be of legislative discretion, yet its exercise is not untrammeled. It cannot be capricious. The exemption "cannot be sustained when special, partial and arbitrary." [2]

Exemption from taxation is a form of classification,

[1] 165 U. S., 150, 155. [2] Mr. Chief Justice FULLER in *Caldwell* v. *Texas*, 137 U. S., 692, 698.

and its legality is capable of being tested by a similar standard of reasonableness. The reason for the existence of this power is public policy or expediency, and its exercise without reference to this reason is indefensible.

Exemptions of small amounts of property have been justified in some cases for the reason that the expense of collection would exceed the amount collected, and in other cases as relieving the needy from the burdens of government. Desty in his work on taxation (Vol. 1, p. 633), says that the policy which justifies such exemptions is that which seeks "to enable the poor man not yet a pauper to escape becoming a public burden."

In Cooley on Taxation (2d ed. p. 215), the author says:

> "It is difficult to conceive of a justifiable exemption law which should select single individuals or corporations, or single articles of property, and, taking them out of the class to which they belong, make them the subject of capricious legislative favor. Such favoritism could make no pretense to equality; it would lack the semblance of legitimate tax legislation."

In *Orr* v. *Baker*, 4 Ind., 86, 88, STUART, J., said:

> "The tax from which one class of persons is exempt, is thrown as an additional burden on the other classes. To say that such is the practice of civilized nations, is not sound. It is rather an apology for a departure from principle. Under our institutions, there is no good reason why one species of property, or one class of persons, should be exempt from the common burdens which, for the common good, all ought equally to bear. Hence these exemptions, as they are contrary to common right, are not favored by the courts."

In *State* v. *Indianapolis*, 69 Ind., 375, 377, 378, BIDDLE, J., said:

> "If the Legislature can exempt the property of widows, unmarried females, and female minors without fathers, from taxation, they can also exempt the property of widowers, unmarried males, and male minors who have no father. By the same principle, we do not see why they might not exempt the

> property of students, apprentices, milliners, mantua-makers, or any other worthy individuals or classes, which might be supposed less able to bear their proportionate burdens necessary to the State's existence, than the more stalwart and wealthy. It is the use of the property for the public benefit which will authorize its exemption from taxation by law. * * * *The common burden of taxation should be regulated by a fixed general rule, apportioned and sustained by a uniform ratio of equality. Exemption from taxation should be based only on a well grounded public policy, by which all share in the benefits.*"

The justification for exemptions must, therefore, in any case be a rule of public policy. This may demand that property taxes should not be exacted from that class of persons whose products do not exceed the minimum of subsistence, according to a universal standard of reasonableness founded on common experience. No such reason can be applied to an exemption from a tax on legacies or inheritances of $20,000. The recipient may already be possessed of the means of subsistence or, indeed, of great wealth. If the reason for the exemption be, from another point of view, that the cost of collecting a small amount exceeds the amount of the tax, no such reason can exempt so large a legacy as $20,000, or the very valuable life estates and estates for years which are being constantly created, particularly in Chicago.

To state it in another form, the exemption must be to effect some public purpose. "If this salutary principle be abandoned, we unsettle the foundations of private property, and unwisely open the door for frauds and abuses of the most alarming character." (DILLON, J., in *National Bank* v. *Iola*, 9 Kan., 689, 702; see also *Exchange Bank* v. *Hines*, 3 Ohio St., 1, 13, 14; *City of New Orleans* v. *Fourchy*, 30 La. Ann., 910, 913; *People* v. *McCreery*, 34 Cal., 432, 457.)

B.

It is peculiarly the province of this Court to determine what exemptions are arbitrary and unreasonable according to established rules of law, and to interfere under the authority of the fourteenth amendment in order to prevent the inequality which must necessarily result from a tax granting large exemptions.

The precise case has never before arisen in this Court, but the existence of this right—this duty—in the supreme tribunal has been asserted in analogous cases.

The language of the cases on this point is clear and decisive. Mr. Justice HARLAN, delivering the opinion of the Court in *Mugler* v. *Kansas*, 123 U. S., 623, 661, says:

> "There are, of necessity, limits beyond which legislation cannot rightfully go While every possible presumption is to be indulged in favor of the validity of a statute, * * * the courts must obey the Constitution rather than the law-making department of government, and must, upon their own responsibility, determine whether, in any particular case, these limits have been passed. 'To what purpose,' it was said in *Marbury* v. *Madison*, 1 Cranch, 137, 176, 'are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed are of equal obligation.' The courts are not bound by mere forms, nor are they to be misled by mere pretences. They are at liberty—indeed, are under a solemn duty—to look at the substance of things, whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority."

In *Regan* v. *Farmers' Loan and Trust Co.*, 154 U. S., 362, 399, referring to previous decisions, Mr. Justice BREWER said:

"These cases all support the proposition that while it is not the province of the courts to enter upon the merely administrative duty of framing a tariff of rates for carriage, it it is within the scope of judicial power and a part of judicial duty to restrain anything which, in the form of a regulation of rates, operates to deny to the owners of property invested in the business of transportation that equal protection which is the constitutional right of all owners of other property. There is nothing new or strange in this. It has always been a part of the judicial function to determine whether the act of one party (whether that party be a single individual, an organized body, or the public as a whole) operates to divest the other party of any rights of person or property. * * * The equal protection of the laws which, by the Fourteenth Amendment, no State can deny to the individual, forbids legislation, in whatever form it may be enacted, by which the property of one individual is, without compensation, wrested from him for the benefit of another, or of the public. This, as has been often observed, is a government of law, and not a government of men, and it must never be forgotten that under such a government, with its constitutional limitations and guarantees, the forms of law and the machinery of government, with all their reach and power, must in their actual workings stop on the hither side of the unnecessary and uncompensated taking or destruction of any private property, legally acquired and legally held."

X.

NO PRECEDENT JUSTIFIES THIS ARBITRARY FORM OF TAXATION.

A.

It has been suggested in support of progressive taxes that the United States tax during the civil war was progressive, as if this established a precedent for an unequal tax in times of peace. So, also, as to the federal tax in 1798, which was passed in anticipation of war. It would be opposed to every principle of civil and political liberty to hold these sacrifices, willingly and gladly submitted to in a time of war, as precedents for unlawful exactions in a time of peace. As Chief Justice CHASE said in *Hepburn* v. *Griswold*, 8 Wall., 603, 625 :

> "It is not surprising that amid the tumult of the late civil war, and under the influence of apprehensions for the safety of the Republic almost universal, different views, never before entertained by American statesmen or jurists, were adopted by many. The time was not favorable to considerate reflection upon the constitutional limits of legislative or executive authority. If power was assumed from patriotic motives, the assumption found ready justification in patriotic hearts. Many who doubted yielded their doubts; many who did not doubt were silent."[1]

Likewise, it has been suggested that the United States is the only English-speaking nation that has not adopted the progressive principle as to inheritance taxes; but equally true is it that it is the only nation founded upon the principle of equality and a written constitution guaranteeing equal rights, and securing to every "person within its jurisdiction the equal protection of the laws." We are not living under a system of English parliamentary rule, unchecked by constitutional limitations. No student needs to be reminded that Parliament has passed many arbitrary and confiscatory laws which could never stand under the American system.

B.

If either the exemptions or the progression be invalid, both of which are essential and inseparable parts of the whole act, the law must be declared unconstitutional. It is impossible to eliminate any of these arbitrary provisions without making a new law. This is not within the judicial province. It would not be construction but legislation, and ordaining as law what the Illinois legislature might have done but has not done. (*Poindexter* v. *Greenhow*, 114 U. S., 270, 304; *Baldwin* v. *Franks*, 120 U. S., 678,

[1] See also Magna Charta by Thompson, p. 371.

685; *California* v. *Pacific R. R. Co.*, 127 U. S., 1, 29; *Pollock* v. *Farmers' Loan and Trust Co.*, 158 U. S., 601, 635.)

As was said by Mr. Justice MATTHEWS in *Spraigue* v. *Thompson*, 118 U. S., 90, 94–95, an exception which cannot be rejected without assuming an act to provide what a legislature never intended must cause the whole statute to be declared invalid, viz.:

> "But the insuperable difficulty with the application of that principle of construction [*i. e.*, that part of an act may be valid and part invalid] to the present instance is, that by rejecting the exceptions intended by the legislature of Georgia, the statute is made to enact what confessedly the legislature never meant. It confers upon the statute a positive operation beyond the legislative intent, and beyond what anyone can say it would have enacted in view of the illegality of the exceptions."

C.

If this assumption of arbitrary power on the part of state government is now sanctioned by the Court, the time cannot be distant when the majority of the voters, unchecked and unrestrained by a constitution, will confiscate and despoil private property under the pretence of taxation and the worst follies and crimes of history will be repeated. State constitutions are being constantly changed to meet the passion, the prejudice, the expediency of the hour. The Federal Constitution alone seems likely to last, as the only stable bulwark of our rights. There could be no greater danger to our institutions than to have it now declared that progressive taxation, with all its evil tendencies, is not within the prohibition of the great amendment adopted to guarantee to all "the protection of equal laws" It is not now necessarily a question of amount: it is a question of principle. The

discrimination, already great in the pending statute, shrinks into insignificance when we contemplate that no one can conceive where the principle of progression will stop or where it will lead us. If the progression is not spoliation to-day, who knows that it may not become so to-morrow? The motto must be, *obsta principiis.*[1] We are not bound to trust to the moderation of legislatures. Is not our supreme danger that one class will vote the taxes for another class to pay? This Court can never be called upon to perform a duty of more vital and comprehensive interest to the nation than that of protecting the rights of the people against such legislative encroachment, or of preventing the adoption throughout the country of so dangerous a policy as that embodied in the Illinois Inheritance Tax Law.[2]

No argument is here presented tending to abridge the taxing powers of the states. It is simply urged that the power must be exercised impartially, by equal laws, for public purposes. Let each contribute his share up to the full measure of the requirements, the necessities, the emergencies of the state, even if it shall take all. Those legislating should feel the practical restraint which must come from taxing all impartially. If the power to tax thus impartially exercised lead to destruction, the plea now made is that the exaction or the destruction must be equal and not of selected individuals: that the state cannot arbitrarily discriminate against the few in favor of the many; that it cannot sacrifice or spoliate the property of one—the lowliest or the richest—for the benefit of others.

[1] Mr. Justice BRADLEY in *Boyd* v. *United States*, 116 U. S., 616, 635.

[2] Commenting on these pending cases, Dr. West, an advocate of progression in taxes says, in the December number of the *North American Review*, p. 756: "On the other hand, a favorable decision will doubtless prove a powerful stimulus to the development of progressive taxation throughout the country."

The observance of the principles of equality in the past has built up a great and prosperous nation. Security of property rights and confidence in the impartial administration of the laws have been the true sources of a prosperity which is the wonder and the envy of the world. Whatever may be temporary local interest or prejudice or blindness, the people will inevitably realize that the disregard of the principle of equality is in conflict with their own vital and permanent welfare and cannot be suffered if we are to remain a free people under the rule of constitutional guaranties restraining all arbitrary and despotic exercise of the powers of government. "In this sense, the restraints on men, as well as their liberties, are to be reckoned among their rights."[1]

CONCLUSION.

It is, therefore, earnestly submitted that the judgments appealed from should be reversed and the Illinois Inheritance Law declared in conflict with the guaranty of the protection of equal laws under the fourteenth amendment in that:

(1.) Progressive or graduated taxation is violative of the rule of equality and is necessarily arbitrary.

(2.) The progression or graduation provided in the act is arbitrary, unreasonable and indefensible even if the principle of progressive taxation be sustained.

(3.) The exemptions of legacies of $20,000 and of life estates and estates for years are unreasonable and

[1] Burke's Works, Am. ed., "Reflections on the Revolution in France," Vol. III, p. 310.

arbitrarily create inequality of burden among taxpayers.

Washington, October Term, 1897.

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APPENDIX.

TAX ON DEVISES, INHERITANCES, AND GIFTS.

An Act to tax gifts, legacies and inheritances in certain cases and to provide for the collection of the same.

Approved June 15, 1895. In force July 1, 1895. L. 1895, p. 301.

Rate of Tax and Classification.

§ 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly: All property, real, personal and mixed which shall pass by will or by the intestate laws of this State from any person who may die seized or possessed of the same while a resident of this State or, if decedent was not a resident of this State at the time of his death, which property or any part thereof shall be within this State or any interest therein or income therefrom, which shall be transferred by deed, grant, sale or gift made in contemplation of the death of the grantor or bargainor or intended to take effect, in possession or enjoyment after such death, to any person or persons or to any body politic or corporate in trust or otherwise, or by reason whereof any person or body politic or corporation shall become beneficially entitled in possession or expectation to any property or income thereof, shall be, and is, subject to a tax at the rate hereinafter specified to be paid to the treasurer of the proper county for the use of the State, and all heirs, legatees and devisees, administrators, executors and trustees shall be liable for any and all such taxes until the same shall have been paid as hereinafter directed. When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son or the husband of the daughter, or any child or children adopted as such in conformity with the laws of the State of Illinois, or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent, or to any lineal descendant born in lawful wedlock, in every such case the rate of tax shall be one dollar on every hundred dollars of the clear market value of such property received by each person, and at and after the same rate for every less amount, provided that any estate which may be valued at a less sum than twenty thousand dollars shall not be subject to any such duty

(1) Upon lineal descendants, parents, &c., one per cent. on each share or legacy in excess of $20,000.

or taxes, and the tax is to be levied in above cases only upon the excess of twenty thousand dollars received by each person. When the beneficial interests to any property or income therefrom shall pass to or for the use of any uncle, aunt, niece, nephew or any lineal descendant of the same, in every such case the rate of such tax shall be two dollars on every one hundred dollars of the clear market value of such property received by each person on the excess of two thousand dollars so received by each person. In all other cases the rate shall be as follows: On each and every hundred dollars of the clear market value of all property and at the same rate for any less amount; on all estates of ten thousand dollars and less, three dollars; on all estates of over ten thousand dollars and not exceeding twenty thousand dollars, four dollars; on all estates over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars, and on all estates over fifty thousand dollars, six dollars: PROVIDED, that an estate in the above case which may be valued at a less sum than five hundred dollars shall not be subject to any duty or tax.

(2) Upon collateral relatives, two per cent. on each share or legacy in excess of $2,000.

(3) Upon all others: 3 per cent. on $10,000 or less. 4 per cent. on all over $10,000 and not exceeding $20,000. 5 per cent. on all over $20,000 and not exceeding $50,000. 6 per cent. on all over $50,000.

§ 2. When any person shall bequeath or devise any property or interest therein or income therefrom to mother, father, husband, wife, brother and sister, the widow of the son, or a lineal descendant during the life or for a term of years or remainder to the collateral heir of the decedent, or to the stranger in blood or to the body politic or corporate at their decease, or on the expiration of such term, the said life estate or estates for a term of years shall not be subject to any tax and the property so passing shall be appraised immediately after the death at what was the fair market value thereof at the time of the death of the decedent in the manner hereinafter provided, and after deducting therefrom the value of said life estate, or term of years, the tax transcribed by this Act on the remainder shall be immediately due and payable to the treasurer of the proper county, and, together with the interests thereon, shall be and remain a lien on said property until the same is paid: PROVIDED, that the person or persons or body politic or corporate beneficially interested in the property chargeable with said tax elect not to pay the same until they shall come into the actual possession or enjoyment of such property, or, in that case said person or persons or body politic or corporate shall give a bond to the People of the State of Illinois in the penalty three times the amount of the tax arising upon such estate with such sureties as the county judge may approve, conditioned for the payment of the said tax, and interest thereon, at such time or period as they or

Estates for life or years.

their representatives may come into the actual possession or enjoyment of said property, which bond shall be filed in the office of the county clerk of the proper county : PROVIDED, FURTHER, that such person shall make a full, verified return of said property to said county judge, and file the same in his office within one year from the death of the decedent, and within that period enter into such securities and renew the same for five years.

Tax—When payable.

§ 3. All taxes imposed by this act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and interest at the rate of six per cent. per annum shall be charged and collected thereon for such time as said taxes is not paid : PROVIDED, that if said tax is paid within six months from the accruing thereof, interest shall not be charged or collected thereon, but a discount of five per cent. shall be allowed and deducted from said tax, and in all cases where the executors, administrators, or trustees do not pay such tax within one year from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in section two of this act for the payment of said tax, together with interest.

Tax—How, when and by whom payable

§ 4. Any administrator, executor or trustee having any charge or trust in legacies or property for distribution subject to the said tax shall deduct the tax therefrom, or if the legacy or property be not money he shall collect a tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon, and whenever any such legacy shall be charged upon or payable out of real estate, the heir or devisee, before paying the same shall deduct said tax therefrom and pay the same to the executor, administrator or trustee, and the same shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the payment of said legacies might be enforced, if, however, such legacy be given in money to any person for a limited period, he shall retain the tax upon the whole amount, but if it be not in money, he shall make application to the court having jurisdiction of his accounts to make an apportionment, if the case requires it, of the sum to be paid into his hands by such legatees, and for such further order relative thereof as the case may require.

Powers of executors, administrators and trustees.

5. All executors, administrators and trustees shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled to do by law, for the payment of duties of their testators and intestates, and the amount of said tax shall be paid as hereinafter directed.

Payment of tax—Receipt.

§ 6. Every sum of money retained by any executor, administrator, or trustee, or paid into his hands for any tax on any property, shall be paid by him within thirty days thereafter to the treasurer of the proper county, and the said treasurer or treasurers shall give, and every executor, administrator or trustee shall take, duplicate receipts from him of said payments, one of which receipts he shall immediately send to the State Treasurer, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlements of his accounts, but the executor, administrator or trustee shall not be entitled to credit in his accounts or be discharged from liability for such tax unless he shall purchase a receipt so sealed and countersigned by the treasurer and a copy thereof certified by him.

Real estate subject to tax—Duty of executors, administrators and trustees.

§ 7. Whenever any of the real estate of which any decedent may die seized shall pass to any body politic or corporate, or to any person or persons, or in trust for them, or some of them, it shall be the duty of the executor, administrator or trustee of such decedent to give information thereof in writing to the treasurer of the county where said real estate is situated, within six months after they undertake the execution of their expected duties, or if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge.

Debts proved after distribution.

§ 8. Whenever debts shall be proved against the estate of the decedent after distribution of legacies from which the inheritant tax has been deducted in compliance with this act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be repaid to him by the executor or administrator, if the said tax has not been paid into the State or county treasury, or by the county treasurer if it has been so paid.

Transfer of stocks or loans by foreign representative.

§ 9 Whenever any foreign executor or administrator shall assign or transfer any stocks or loans in this State standing in the name of decedent, or in trust for a decedent, which shall be liable

to the said tax, such tax shall be paid to the treasury or treasurer of the proper county on the transfer thereof; otherwise the corporation forming such transfer shall become liable to pay such taxes, provided that such corporation has knowledge before such transfer that said stocks or loans are liable to such taxes.

Tax paid in error.

§ 10. When any amount of said tax shall have been paid erroneously to the State treasury, it shall be lawful for him, on satisfactory proof rendered to him by said county treasurer of said erroneous payments to refund and pay to the executor, administrator or trustee, person or persons, who have paid any such tax in error, the amount of such tax so paid: PROVIDED, that all applications for the repayment of said tax shall be made within two years from the date of said payment.

Appraisement

§ 11. In order to fix the value of property of persons whose estate shall be subject to the payment of said tax, the county judge, on the application of any interested party, or upon his own motion, shall appoint some competent person as appraiser as often as, or whenever, occasion may require, whose duty it shall be forthwith to give such notice by mail to all persons known to have or claim an interest in such property, and to such persons as the county judge may by order direct, of the time and place he will appraise such property, and at such time and place to appraise the same at a fair market value, and for that purpose the appraiser is authorized by leave of the county judge to use subpœnas for and to compel the attendance of witnesses before him, and to take the evidence of such witnesses under oath concerning such property and the value thereof, and he shall make a report thereof and of such value in writing to said county judge, with the depositions of the witnesses examined and such other facts in relation thereto, and to said matter as said county judge may by order re uire to be filed in the office of the clerk of said county court, and from this report the said county judge shall forthwith use and fix the then cash value of all estates, annuities and life estates or terms of years growing out of said estate, and the tax to which the same is liable, and shall immediately give notice by mail to all parties known to be interested therein. Any person or persons dissatisfied with the appraisement or assessment may appeal therefrom to the county court of the proper county within sixty days after the making and filing of such appraisement or assessment, on paying the given security proof to the county judge to pay all costs, together with whatever taxes that shall be fixed by said court. The said appraiser shall be paid by the county treasurer

out of any funds he may have in his hands on account of said tax, on the certificate of the county judge, at the rate of three dollars per day for every day actually and necessarily employed in said appraisement, together with his actual and necessary traveling expenses.

Misconduct of appraiser—penalty.

§ 12. Any appraiser appointed by this Act who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said tax or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors he shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars and imprisoned not exceeding ninety days, and in addition thereto the county judge shall dismiss him from such service.

County Court—jurisdiction.

§ 13. The county court in the county in which the real property is situated, of the decedent who was not a resident of the State, or in the county in which the deceased was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this act, and the county court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other.

Unpaid tax—powers, practice, etc.

§ 14. If it shall appear to the county court that any tax accruing under this Act has not been paid according to law, it shall issue a summons summoning the persons interested in the property liable to the tax to appear before the court on a day certain not more than three months after the date of such summons, to show cause why said tax should not be paid. The process, practice and pleadings and the hearing and determination thereof, and the judgment in said court in such cases shall be the same as those now provided or which may hereafter be provided in probate cases in the county courts in this State and the fees and costs in such cases shall be the same as in probate cases in the county courts of this State.

Unpaid tax—Enforcement and collection.

§ 15. Whenever the treasurer of any county shall have reason to believe that any tax is due and unpaid under this Act, after the refusal or neglect of the person interested in the property liable to pay said tax, to pay the same, he shall notify the State's attorney of the proper county, in writing, of such refusal to pay said tax, and the State's attorney so notified, if he has proper cause to be-

lieve a tax is due and unpaid, shall prosecute the proceeding in the county court in the proper county, as provided in section 14 of this act, for the enforcement and collection of such tax, and in such case said Court shall allow as costs in the said case such fees to said attorney as he may deem reasonable.

County Judge and Clerk to notify County Treasurer.

§ 16. The county judge and county clerk of each county shall, every three months, make a statement in writing to the county treasurer of the county of the property from which, or the party from whom, he has reason to believe a tax under this act is due and unpaid.

Expenses incurred under section 14

§ 17. Whenever the county judge of any county shall certify that there was probable cause for issuing a summons, and taking the proceedings specified in section 14 of this act, the State Treasurer shall pay or allow to the treasury of any county all expenses incurred for service of summons and his other lawful disbursements that has not otherwise been paid.

Public records —furnished by State Treasurer.

§ 18. The Treasurer of the State shall furnish to each county judge a book in which he shall enter the returns made by appraisers, the cash value of annuities, life estates and terms of years and other property fixed by him, and the tax assessed thereon and the amounts of any receipts for payments thereon filed with him, which books shall be kept in the office of the county judge as a public record.

Collection and payment— Semi-annual report.

§ 19. The treasurer of each county shall collect and pay the State Treasurer all taxes that may be due and payable under this act, who shall give him a receipt therefor, of which collection and payment he shall make a report under oath to the Auditor of Public Accounts on the first Monday in March and September of each year, stating for what estate paid, and in such form and containing such particulars as the Auditor may prescribe, and for all said taxes collected by him and not paid to the State Treasurer by the first day of October and April of each year, he shall pay interest at the rate of ten per cent. per annum.

County Treasurer's fee.

§ 20. The treasurer of each county shall be allowed to retain two per cent. on all taxes paid and accounted for by him under this act, in full for his services in collecting and paying the same, in addition to his salary or fees now allowed by law.

Receipt.

§ 21. Any person, or body politic or corporate shall upon the payment of the sum of fifty cents, be entitled to a receipt from the county treasurer of any county or the copy of the receipt, at his option, that may have been given by said treasurer for the payment of any tax under this act, to be sealed with the seal of his office, which receipt shall designate on what real property, if any, of which any deceased may have died seized, said tax has been paid and by whom paid, and whether or not it is in full of said tax and said receipt may be recorded in the clerk's office of said county in which the property may be situated, in the book to be kept by said clerk for such purpose.

Lien of collateral inheritance tax.

§ 22. The lien of the collateral inheritance tax shall continue until the said tax is settled and satisfied : PROVIDED, that said lien shall be limited to the property chargeable therewith : AND, PROVIDED, FURTHER, that all inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to be paid and cease to be a lien as against any purchasers of real estate.

Repeal.

§ 23. All laws or parts of laws inconsistent herewith be, and the same are hereby repealed.